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2
3 CONSTITUTIONAL CONVENTION

4 OF THE

5 STATE OF MARYLAND

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9
10 Chamber of the House of Delegates

11 State Capitol

12 Annapolis, Maryland

13 December 14, 1967 - 10:09 a.m.

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16
17 HONORABLE H. VERNON ENEY,
18 PRESIDENT

19
20 Reported by:

21 C. J. Hunt

and

D. Fitzgerald

CONSTITUTIONAL CONVENTION

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Maryland

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Chapter of the House of Delegates

State Capitol

Annapolis, Maryland

November 14, 1967 - 1968

HONORABLE A. VERNON SMITH

PRESIDENT

Reported by:
C. J. Smith
and
J. F. Smith

P R O C E E D I N G S

THE PRESIDENT: The Sergeant at Arms will clear the aisles and close the doors.

The Convention will please come to order.

The invocation this morning will be offered by the Reverend Don B. Lowe of Bosley Methodist Church, in Baltimore County.

This gives me particular pleasure, because Reverend Lowe is my minister.

REVEREND LOWE: Let us pray.

Oh Lord God, we invoke your blessing upon the proceedings of this day, upon all those who labor for the benefits of a more just and viable tool in our state government, upon the dialogue and the free conversation that takes place here so that the goals of this Constitutional Convention might be more readily and speedily realized.

Grant us the gift of your Spirit as our spirits touch one another so that our common efforts might produce new insights and constant challenges as we work toward a satisfying and fulfilling conclusion to all of our endeavors.

1 In the name of the One God who we experience
2 through our concern and understanding of one another, we
3 pray, Amen.

4 THE PRESIDENT: Roll call.

5 (Whereupon, the roll was called.)

6 THE PRESIDENT: Have all delegates answered
7 roll call? The Clerk will record the roll call.

8 There being a quorum present, the Convention
9 is in session.

10 The Chair recognizes Chairman Powers,
11 Chairman of the Committee on Calendar and Agenda.

12 DELEGATE POWERS: Mr. President, I move the
13 adoption of today's calendar.

14 (The motion was seconded.)

15 THE PRESIDENT: All in favor signify by saying
16 Aye; those opposed, No. The Ayes have it and it is so
17 ordered.

18 Are there any reports of the committees?

19 MR. QUILLEN: No.

20 THE PRESIDENT: Any papers to be read across the
21 desk?

MR. QUILLEN: No.

1 THE PRESIDENT: Any motions or resolutions?

2 The Chair has two brief announcements to be
3 made.

4 Editing of the transcript is proceeding, albeit
5 slowly, under the direct supervision of Miss Mary Anne
6 Krupsak. She is making only such changes as are
7 necessary and it is not practically possible to have her
8 submit the transcript to every delegate.

9 However, there are places where either because
10 the Delegate didn't express himself clearly or because
11 the reporter did not hear or understand him, that it is
12 not clear as to what is intended.

13 In these relatively few instances, it will
14 be necessary for Miss Krupsak to talk to the delegate.
15 She will do this by sending you a note during the session.
16 I ask that you go back to the lounge and speak to her.

17 In most instances, she will need your attention
18 but for a minute or two. If it is longer than that, will
19 you please make an appointment to see her during recess
20 so that you will not be out of the chamber for more than
21 a few minutes.

1 The chief page has also asked me to request of
2 all delegates that they please do not disturb the piles
3 of amendments on the tables in the lounge.

4 They have in the past few days been disturbed
5 by delegates trying to find copies. They get out of order.
6 This results in confusion on the floor and the passing
7 out of the wrong amendments.

8 If you want an amendment, ask the page. Please
9 do not undertake to get it yourself. This is particularly
10 true at the recess hour, when the chief page is not there.
11 Please do not disturb the amendments on the table.

12 The Chair recognizes Delegate Powers, Chairman
13 of the Committee on Calendar and Agenda.

14 DELEGATE POWERS: Mr. President, I move that
15 the Convention resolve itself into a Committee of the
16 Whole so that we may consider the general orders of the
17 day.

18 THE PRESIDENT: Is there a second?

19 (The motion was seconded.)

20 THE PRESIDENT: All in favor signify by saying
21 Aye; opposed, No. The Ayes have it and it is so ordered.

1 (Whereupon, at 10:15 o'clock a.m., the Con-
2 vention resolved itself into the Committee of the Whole.)

3 (The mace was removed by the Sergeant at Arms.)

4 THE CHAIRMAN: The Committee of the Whole will
5 please come to order.

6 For what purpose does Delegate Price rise?

7 DELEGATE PRICE: For a point of personal
8 privilege, please.

9 THE CHAIRMAN: State the privilege.

10 DELEGATE PRICE: Before we get underway, I would
11 like for the group to welcome in the gallery facing us
12 Mr. Walters and his class of students from the Sparrows
13 Point Senior High School in Baltimore County.

14 We welcome you. (Applause.)

15 THE CHAIRMAN: The Committee of the Whole has
16 under consideration Committee Recommendation R&P-2. We
17 had moved down to Section 6 and were about to consider
18 it when we recessed last evening.

19 Section 6 is virtually identical with Committee
20 Recommendation GP-9. The Chair would prefer to see the
21 matter discussed at that time so that we can conclude

1 consideration of Committee Recommendation R&P-2 promptly.

2 For this reason the Chair requested Delegate
3 an
4 Kiefer to introduce/amendment deleting Section 6. This
5 will not remove the matter from consideration of the
6 Committee of the Whole.

7 You will have the matter before you in substan-
8 tially identical form later today.

9 Delegate Kiefer.

10 DELEGATE KIEFER: Mr. Chairman, has the amend-
11 ment been prepared?

12 THE CHAIRMAN: The amendment is on the way over

13 DELEGATE KIEFER: The amendment is simply to
14 delete Section 6 from R&P-2. As you know, there are
15 technical matters to be covered here. This is a matter
16 that is being worked on and I would therefore recommend
17 to you that it be, that the amendment be accepted with
18 the understanding, of course, that it will be considered
19 fully under GP -- GP Recommendation Number 9.

20 THE CHAIRMAN: Is there any objection to con-
21 sidering the amendment; although not printed, it is on
its way over from the printshop right now?

1 Delegate Moser.

2 DELEGATE MOSER: No objection, Mr. Chairman,
3 of course. But I wonder if my amendment AC might be
4 appended as an amendment to GP-9, whatever it is.

5 THE CHAIRMAN: We will have it reprinted in
6 that form.

7 DELEGATE MOSER: All right.

8 THE CHAIRMAN: Is there any objection to re-
9 printing the amendment at this time with the understanding
10 that it will be on your desk in a very few moments?

11 The Chair hears none.

12 This will be Amendment Number 8. The amendment
13 is moved by Delegate Kiefer. Is there a second?

14 (The amendment was seconded.)

15 THE CHAIRMAN: The amendment has been seconded.
16 Is there any discussion?

17 Are you ready for the question?

18 The question arises on the adoption of Amend-
19 ment Number 8 which is to delete all of Section 6 comprising
20 lines 28 to 50 on page 2 of Committee Recommendation
21 R&P-2.



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Dec 14, 1967.

MD-50d

Card 1 of 4

12/4



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Dec 14, 1967.

MD-50d

Card 2 of 4



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Dec 14, 1967.

MD-50d

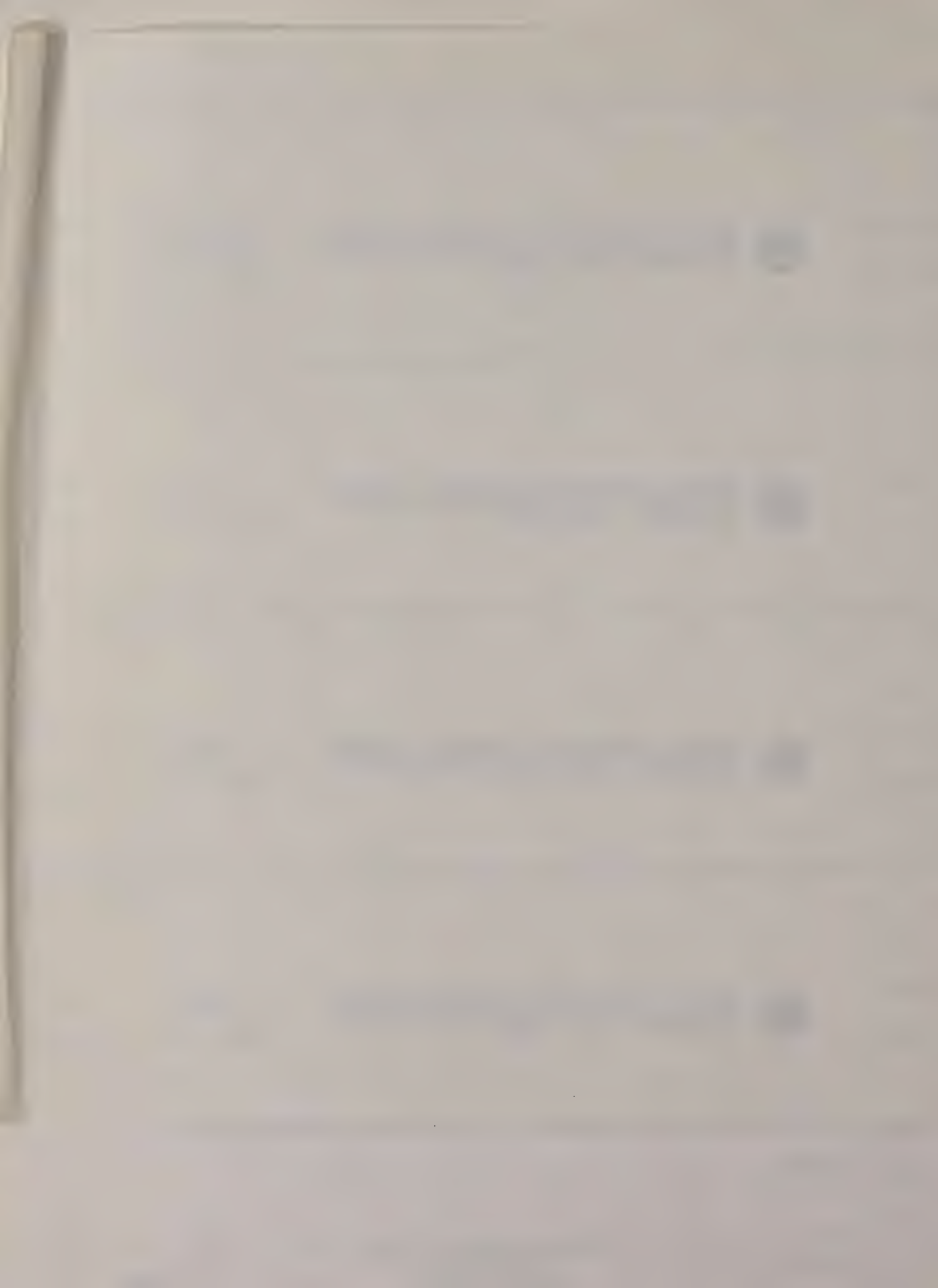
Card 3 of 4



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Dec 14, 1967.

MD-50d

Card 4 of 4



1 This will not preclude discussion of this
2 subject because the same matter is included in Committee
3 Recommendation GP-9 which is on the calendar for later
4 consideration today.

5 The sole purpose of the amendment, therefore,
6 is to avoid double consideration of the same matter.

7 Are you ready for the question?

8 The question arises on the adoption of
9 Amendment Number 8. A vote Aye is a vote in favor of the
10 amendment; a vote No is a vote against. Cast your votes.

11 Has every delegate voted? Does any delegate
12 desire to change his vote?

13 The Clerk will record the vote.

14 There being 86 votes in the affirmative and one
15 in the negative, the motion is carried. The amendment
16 is adopted and Section 6 is deleted.

17 The next section before you is Section 7.

18 Delegate Kiefer, you have an amendment to Sec-
19 tion 7. Delegate Scanlan has an amendment which would
20 strike the entire section.

21 The Chair would be disposed to present Delegate

1 SCanlan's amendment first unless you have any objection
2 to that.

3 DELEGATE KIEFER: No, sir.

4 THE CHAIRMAN: Delegate Scanlan, you propose
5 to offer your amendment, Q?

6 DELEGATE SCANLAN: I do, Mr. Chairman.

7 THE CHAIRMAN: Pages will please distribute
8 Amendment Number Q. This will be Amendment Number 9.

9 The Clerk will read the amendment.

10 MR. QUILLEN: Amendment Number 9 to Committee
11 Recommendation R&P-2 by Delegate Scanlan.

12 On page 3 Section 7 Right to Sue State and
13 Local Governments strike out all of lines 1 through 9,
14 inclusive.

15 THE CHAIRMAN: The amendment has been submitted
16 by Delegate Scanlan, is there a second?

17 (The amendment was seconded.)

18 THE CHAIRMAN: The amendment is seconded by
19 Delegate Bennett.

20 For what purpose does Delegate Kiefer rise?

21 DELEGATE KIEFER: Mr. Chairman, I will argue

1 against this but I believe it would be helpful to the
2 Committee if they would also have before them while this
3 discussion is going on my amendment D.

4 THE CHAIRMAN: Very well.

5 The chief page will please distribute Amendment
6 D.

7 The Amendment Number 9 has been distributed.

8 The Chair recognizes Delegate Scanlan to speak
9 to the amendment.

10 DELEGATE SCANLAN: Mr. Chairman and fellow
11 delegates, once again I arise to oppose insertion in the
12 Constitution of a provision that is meaningless at best
13 and reckless at worst.

14 I read Section 7 several times. Reading it one
15 way I concluded that it does not change the present status
16 of the law under which the General Assembly has full power
17 to relax the doctrine of sovereign immunity, that is the
18 doctrine that the state cannot be sued, in those areas where
19 in its judgment it should be relaxed.

20 On the other hand, reading it again, I concluded
21 that the proposition contained in Section 7 would lay

1 open not only the state but all the political subdivi-
2 sions of this state including the smallest municipality
3 to the danger of being sued for damages because of the
4 torts committed by agents of the municipality in the
5 performance of their duties.

6 There is another area where, again, this
7 doctrine would carry us far from existing law. At the
8 present time when an officer of the state abuses his
9 authority or acts in a manner which a citizen regards as
10 illegal, he does not sue the state, he sues the officer
11 for breach of his authority.

12 Under this provision, I believe it would be
13 perfectly logical to argue that the state would equally
14 be a defendant.

15 The point is that the whole matter dealt with
16 in Section 7 is a statutory concept. The Federal govern-
17 ment has taken the lead in relaxations of sovereign
18 immunity and many of you have probably heard of the
19 Federal tort Claims Act in which that immunity is relaxed
20 but in the same act, that relaxes that immunity, there
21 are carefully reserved exceptions.

1 This cannot be dealt with in a Constitutional
2 clause or a vacuum. It has to be dealt with in a fairly
3 detailed statute. I don't see how in writing the
4 Constitution we can write a tort claims act into it.

5 It is unnecessary. I wish Judge Henderson
6 were here. He spoke to this point yesterday, I believe,
7 that the General Assembly has already acted in this area,
8 and can continue to act in this area.

9 I see no reason time after time to put into
10 this Constitution grants of power which the General
11 Assembly already has and goads to action which the General
12 Assembly has already undertaken.

13 There is absolutely no necessity for Section
14 7 and looking at Delegate Kiefer's substitute, all he
15 does is reverse the words, but he comes out the same
16 place and as far as I see it, restates the law as it now
17 stands, namely that the General Assembly has full, complete
18 unlimited power to relax the doctrine of sovereign immuni-
19 ty, is proceeding in that direction, will proceed in that
20 direction, and therefore Section 7 is completely un-
21 necessary.

1 Let us not clutter up the Constitution with
2 unnecessary language.

3 THE CHAIRMAN: Delegate Kiefer.

4 DELEGATE KIEFER: Mr. Chairman and ladies and
5 gentlemen of the Committee, I rise to oppose this amend-
6 ment, which would strike any reference completely to
7 sovereign immunity.

8 This is a matter that is not in the declaration
9 of rights and we don't intend it to be there. This is
10 part of what we had envisioned as I explained to you
11 earlier, a statement of various principles concerning the
12 government and how it operates.

13 One of these concepts and it has been stated in
14 many other state constitutions, allowing or recognizing
15 the necessity of modifying the basic concept that the
16 sovereign can do no wrong and cannot be sued.

17 There are three states, I believe, that strictly
18 forbid any such suits. The modern tendency is to do
19 otherwise, there are now 2 states by Constitutional
20 who statements/recognize this principle. Most of them leave
21 it to the legislature to spell out the areas in which this

1 is to be granted. A few of them spell it out in detail.

2 I therefore urge you to vote against this
3 amendment and while nobody wants it more than I do, a
4 sparse Constitution, nevertheless there are certain corners
5 we don't want to skip and there are certain areas where
6 we want to recognize basic principles. I think this is
7 one of them.

8 I would urge you to defeat this amendment to
9 eliminate all reference to this failure to be able to sue
10 the sovereign state.

11 THE CHAIRMAN: Any other delegate desire to
12 speak in favor of the amendment?

13 Delegate Bamberger.

14 DELEGATE BAMBERGER: Will delegate Kiefer yield
15 to a question?

16 THE CHAIRMAN: Delegate Kiefer, do you yield to
17 a question?

18 DELEGATE KIEFER: Yes, sir.

19 THE CHAIRMAN: Delegate Bamberger.

20 DELEGATE BAMBERGER: Do you intend to offer your
21 amendment D as a substitute for Section 7?

1 THE CHAIRMAN: Delegate Kiefer.

2 DELEGATE KIEFER: Yes.

3 THE CHAIRMAN: Delegate Bamberger.

4 DELEGATE BAMBERGER: Then, if the Constitution
5 says nothing about the immunity of governmental units,
6 doesn't the legislature have the power to prescribe
7 the limits of that immunity?

8 THE CHAIRMAN: Delegate Kiefer.

9 DELEGATE KIEFER: Yes, that is true. But it
10 is like other things that we are putting into this Con-
11 stitution, where we frankly admit that the legislature
12 could do and carry on. We are stating a concept.

13 THE CHAIRMAN: Delegate Bamberger.

14 DELEGATE BAMBERGER: Why, do you mean either
15 Section 7 as it is or your amendment D?

16 THE CHAIRMAN: Delegate Kiefer.

17 DELEGATE KIEFER: As I explained, we thought on
18 this committee and I reiterate the desirability and if
19 you please, almost necessity of establishing this concept.

20 THE CHAIRMAN: Any other delegate desire to speak
21 in favor of the amendment?

1 Delegate Clagett.

2 DELEGATE CLAGETT: Mr. Chairman, I rise in
3 support of the amendment to strike because we have seen
4 over the years a gradual evolution of the effect of this
5 doctrine with respect to the course of our daily lives.

6 As Delegate Henderson mentioned yesterday,
7 to the extent that there is insurance coverage, there is
8 no immunity. To the extent that there is direct exposure
9 where the public interest is involved, the doctrine is
10 recognized.

11 As the public interest changed, it seems that
12 we are undergoing many changes with respect to the public
13 interest, there is no question but that the General
14 Assembly and the courts will be able to adequately deal
15 with the situation.

16 Where something is adequately and has been
17 effectively recognized and taken care of, there is abso-
18 lutely no need for the additional cluttering of this
19 document.

20 Therefore, I strongly urge that we delete it.

21 THE CHAIRMAN: Any other delegate desire to

1 speak in opposition to the amendment?

2 Delegate Macdonald.

3 DELEGATE MACDONALD: Mr. Chairman and fellow
4 delegates. The proposer of this amendment says that the
5 Section 4 in the majority report is not necessary. I
6 submit to you that it is most necessary, especially in
7 connection with suits against counties and municipalities,
8 the present ~~state~~ of the law is this in Maryland.

9 If a county fails to maintain a road properly
10 and there is a pothole and you drive your car into the
11 pothole and you are nevertheless careful, you couldn't see
12 it and the county had acknowledged that the pothole was
13 there and didn't fix it, then you could sue the county.

14 That is the only case in which you could sue
15 the county. If a county police vehicle smashes into your
16 car and the police officer is negligent, grossly negligent
17 and the county has not insured its vehicles for liability
18 you can not recover against the county.

19 The Court of Appeals in discussing this doc-
20 trine has said many times it is illogical, it doesn't
21 make any sense but that is the state of law in Maryland,

1 that is the way it has been and that is the way we will
2 have to interpret it until the General Assembly does some-
3 thing about it.

4 To date, the General Assembly has not done
5 anything. There is a need for this, the doctrine which is
6 in force and effect in the state of Maryland today is
7 outmoded, It seems, from the doctrine that the king can
8 do no wrong.

9 When the king appointed his judges, they were
10 in the service of the king and the king could not be sued
11 in his own courts. The doctrine is hundreds of years
12 old and should be done away with.

13 Now, it has been stated that the General
14 Assembly has acted in this area. I submit to you that
15 it has acted in a few cases only and there are many,
16 many cases in which it has not acted.

17 I am against the amendment and I ask you to
18 support the committee's recommendation.

19 THE CHAIRMAN: Any other delegate desire to speak
20 in favor of the amendment? The Chair recognizes Delegate
21 Dukes.

1 DELEGATE DUKES: I want to speak against the
2 amendment.

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Rybczynski to speak against the amendment.

5 DELEGATE RYBCZYNSKI: I wish to carry forward
6 the argument of Delegate Macdonald. To give you still
7 another example which can bring this matter home to you
8 fully, if a woman is working at a hospital which carries
9 insurance and she injures herself while changing beds
10 or moving a patient, she will be covered by workmen's com-
11 pensation.

12 If she has the misfortune of working at the
13 Baltimore City Hospital doing the very same job, re-
14 ceiving the very same injury, she is not covered.

15 As Delegate Macdonald said, this is archaic,
16 it is ridiculous. In this day of insurance, certainly
17 the state, counties and municipalities are protecting
18 themselves against natural hazards, why should they not
19 protect themselves against man-made hazards?

20 As to detail, if the delegates are really
21 concerned about detail, let us go back to the legislative

1 article which tells the General Assembly how to keep
2 their ledger.

3 This Constitution has portions in it which
4 border on the legislative, however, as Delegate Macdonald
5 pointed out so very well, the legislature has failed to
6 act in this field adequately. It has had a hundred years
7 in which to direct these matters. It has failed to do
8 so.

9 This is a true progressive type piece of
10 Constitutional law. It deserves to be in here and it
11 should stay.

12 THE CHAIRMAN: Any other delegate desire to
13 speak in favor of the amendment?

14 Delegate Moser?

15 DELEGATE MOSER: I rise to speak in favor of
16 Delegate Scanlan's amendment. I think that the colloquy
17 on the floor has illustrated that this is purely a legis-
18 lative matter. That it is something which should be
19 carefully considered by the legislature; they considered
20 a number of bills on the subject the last time.

21 We are moving in the direction of removing

1 sovereign immunity through legislation and I suggest
2 to you that Section 7 as it is worded before the Kiefer
3 amendment might have a disastrous effect on some of
4 the smaller subdivisions.

5 I think that it is something that is a policy
6 matter that we as a Convention cannot possibly give ade-
7 quate consideration to and therefore, I support the
8 deletion of the section.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Dukes.

11 Before recognizing Delegate Dukes, the Chair
12 recognizes Delegate Case to speak to a matter of personal
13 privilege.

14 DELEGATE CASE: Mr. Chairman, it gives me great
15 pleasure to announce a group of distinguished visitors in
16 the gallery from your district and mine, Baltimore
17 County.

18 This is 128 students from Cockeysville Junior
19 High School, accompanied by their teachers, Mrs. Ensor,
20 Mr. De Vita, and Mr. Uhlen.

21 I hope we will give them a very, very cordial

1 welcome. (Applause.)

2 THE CHAIRMAN: The Chair recognizes Delegate
3 Darby to speak to a matter of personal privilege.

4 DELEGATE DARBY: Thank you, Mr. Chairman;
5 fellow delegates, I would like to also extend our usual
6 warm welcome to 39 students from the Sparrow's Point
7 Senior High School who are accompanied by their teacher,
8 Mr. James Walters. (Applause.)

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Dukes to speak in opposition to the amendment.

11 DELEGATE DUKES: Those of you who are or have
12 been around children know that occasionally if you put
13 a small child in a dark room, he becomes very frightened.

14 That principle is essentially why the Maryland
15 Legislature will be a long time doing anything about the
16 doctrine of sovereign immunity. Every time we go
17 before the legislature, the attorney generals will start
18 crying like rabbits followed by a hound.

19 I suggest to you that the Maryland legislature
20 has not done anything of any substance in this area. You
21 have heard about the insurance. Judge Henderson tells

1 you that the insurance has been taken care of.

2 That is the voice of sagacity and the voice of
3 conservatism.

4 I would like you to hear about a divorced mother
5 of a ten-year old girl. She is at school. The teacher
6 pushes the child and she falls on the icy steps and hurts
7 her back. You sue the Prince Georges School Board. They
8 say, "We don't carry insurance. Our counsel advises us
9 if we don't carry insurance, we are not liable." That is
10 the way the legislature set it up.

11 Insurance companies were not paying the claims.
12 They passed that law for one reason, to make insurance
13 companies pay claims when they have collected premiums.
14 If your child is knocked over by a state vehicle, you
15 pay for it.

16 There is a direct relationship between the
17 people and the government. The purpose of the Consti-
18 tution is to set forth certain obligations of the govern-
19 ment and certain rights of the people.

20 If you enter into a contract with someone, you
21 would have a hard time if one of the terms of the contract

1 was that you couldn't sue the party. He and you have
2 obligations and you have got rights and he has. If he
3 breaches his part, you can't do anything about it. You
4 just sit there and wait until maybe the legislature passes
5 a special bill just for you, and then maybe on the other
6 hand they don't.

7 I think you will hear a lot of talk about this
8 being a bad doctrine because this will cost a lot of
9 money. Listen carefully about the people from whom you
10 hear it. Listen to see if they are concerned about the
11 City of Baltimore or whether they are concerned about
12 the people of the state who are injured by the state and
13 will have to bear that injury solely by themselves no
14 matter how much involved the state was.

15 THE CHAIRMAN: For what purpose does Delegate
16 Clagett rise?

17 DELEGATE CLAGETT: For a point of personal
18 privilege.

19 THE CHAIRMAN: State the privilege.

20 DELEGATE CLAGETT: Merely to state that Prince
21 Georges does have insurance companies.

1 THE CHAIRMAN: Delegate Gallagher.

2 DELEGATE GALLAGHER: Mr. Chairman and ladies
3 and gentlemen of the Committee, there is such a mountain
4 of misinformation being thrown about this morning that
5 I think it demonstrates our inability to take care of
6 the problem.

7 I concur that the doctrine of sovereign immunity
8 and the office of charitable immunity should be put aside.
9 We are taking a broad swipe at the problem and in so
10 doing are merely hacking away at it.

11 As a member of the Board of Commissioners of the
12 Baltimore City Hospitals and its past Chairman, I just
13 called the Executive Director and it was determined that
14 all Baltimore City Hospitals do carry Workmen's Compens-
15 sation.

16 If we did some checking I would suspect it
17 would take a long time to get the kind of information
18 together to really exercise proper judgment on this par-
19 ticular problem.

20 I submit that what we are doing is going
21 about a problem without sufficient facts and I don't think

1 the Constitution is the place to take care of it.

2 There has been gradual attrition of the
3 doctrine of charitable immunity in the General Assembly,
4 as you may know. Hospitals were required to carry up to
5 \$100,000 insurance and if they did, they were not liable
6 beyond that.

7 I think it is a step in the right direction.
8 I say we are making a real hit and miss attempt at the
9 problem. We don't have the facts, we have a fountain of
10 misinformation.

11 THE CHAIRMAN: Any other delegate desire to
12 speak in opposition?

13 DELEGATE WEIDEMEYER: Mr. President and members
14 of the Committee. In our committee we gave considerable
15 thought to this and at first the committee was rather
16 hostile, I thought, to the doctrine of removal of sovereign
17 immunity, but on the hearing we concluded that the old
18 doctrine of sovereign immunity coming down from the king
19 of England when the king could do no wrong and in this
20 modern day and age, it was all wrong to have the doctrine
21 of sovereign immunity applied.

1 We found that the legislature had full and
2 plenary power to act. What we are also faced with with
3 this is over the past 15 years the legislature has dragged
4 its feet and moved entirely too slow.

5 We were then faced with ignoring the proposition
6 of removing the doctrine of sovereign immunity or adopting
7 as we have it in Section 7 where the doctrine of sovereign
8 immunity is removed except in such instances as the legis-
9 lature may close the door.

10 We had the other concept where we stated the
11 principle of sovereign immunity ought to be abolished but
12 would be abolished as the legislature opened up the door
13 to the removal.

14 Now, the Section 7 ~~does~~ the one. It opens the
15 door wide and forces the legislature to close the door
16 in those areas that sovereign immunity should be regulated
17 or not given.

18 The other one is a more mild and more signifi-
19 cant one. The one that Delegate Kiefer had. I would gladly
20 go with it because that opens the door, states the concept
21 and says to the legislature in the past you have been

1 wrong, we want the doctrine of sovereign immunity
2 removed and you remove it in those areas and to the
3 extent and in the manner that you remove the doctrine of
4 sovereign immunity, the state shall suffer to be sued.

5 I think we ought to reject the amendment and
6 get at this matter and find out whether or not we want
7 to adopt Section 7 as it is or take the more mild measure
8 offered by Delegate Kiefer, but, certainly, in no event
9 ought we pass this amendment and abolish the concept
10 entirely.

11 As some of them say, it might not do anything,
12 but it states a concept and we ought to state it
13 so that the legislature knows that the people in the
14 Constitutional Convention do not want to stand by this age
15 old doctrine of sovereign immunity which no longer is
16 serving the people of the State of Maryland.

17 Does any other delegate desire to speak in
18 favor of the amendment?

19 Delegate Bamberger?

20 DELEGATE BAMBERGER: I have from time to time
21 been too concerned that there are too many lawyers in

1 this convention and that we tend to talk to each other
2 and not--(Applause).

3 THE CHAIRMAN: Delegate Bamberger, the Chair
4 observes that the applause comes from the non-lawyer members
5 of the Committee.

6 DELEGATE BAMBERGER: I move to expunge the Chair's
7 remark from the record. (Laughter.)

8 I rise to point out that Section 7 makes a very
9 important policy decision. I am not prepared on the basis
10 of any facts stated on this floor to make that policy
11 decision.

12 Let me try to say in non-lawyer language what
13 we are doing. The present law is that you may not sue
14 a unit of government when it is exercising a governmental
15 function, but just taking it without all the qualifica-
16 tions and the legal gobble-de-gook, that you cannot sue a
17 unit of government for injuries which you suffer.

18 I agree that is an archaic doctrine and a
19 doctrine which it is difficult to defend in some par-
20 ticular instances.

21 The legislature now may consider that doctrine

1 and its application to the state, to a county, to a
2 city, to an authority, and to any other governmental
3 unit and make a judgment of whether the resources and
4 the functions of that governmental unit are such that
5 people ought to be able to recover from it when they
6 are injured.

7 That is something which the legislature
8 can explore, can understand the impact of what it does.
9 What Section 7 does is absolutely the reverse of the rule.
10 It says that if you suffer injury because of the action by
11 some unit of government, by the state, or the county or
12 the city, you may sue that unit and recover from the
13 public treasury and recover from the tax funds unless the
14 legislature says you may not.

15 If we adopt Section 7, the door is open. This
16 doctrine of immunity is completely gone and we put on the
17 legislature the burden of reviewing the function of each
18 little unit of government in the state, its resources,
19 how it will be affected by suits that may be filed against
20 it and, in particular instances, saying you cannot sue.

21 What I wish to point out is that we are making,

1 if we adopt Section 7 and reject the Amendment Number 9,
2 we are making a very important policy decision, a decision
3 which will affect the finances not just of the state but
4 of every county, every city, every municipality, every
5 unit of government in the state.

6 I submit that we do not have before us the
7 facts, the justification for making any such decision.
8 I urge you to vote for Amendment Number 9, and leave this
9 matter to be decided by a forum which can direct its
10 attention to it and can ascertain the facts.

11 THE CHAIRMAN: The Chair recognizes Delegate Koger
12 to speak in opposition.

13 DELEGATE KOGER: Mr. Chairman and ladies and
14 gentlemen, I sincerely hope that you will oppose this
15 amendment.

16 First of all , this has been an abuse of the
17 citizens of the state of Maryland for a long, long time.
18 I serve as a member of the Insurance Advisory Commission
19 of Baltimore City.

20 We recently reviewed the insurances carried by
21 the City. We found that in many, many areas not nearly

1 as many as Delegate Gallagher would have you believe, there
2 are many areas where the city of Baltimore can protect it-
3 self or protect the people within the city.

4 To give you a very good example how the state
5 operates, out in Morgan State College we have a canteen
6 that is operated by a Mr. Thompson. Mr. Thompson is
7 required by the state of Maryland to carry 500 to a
8 million dollars of insurance to protect the students or
9 the people who purchase food from the canteen.

10 If my daughter was to break a tooth off while
11 eating a sandwich, she would have some point of recovery.
12 However, less than 100 feet from that where the Morgan
13 College has its dining room, if all the students in
14 the dining room were to suddenly die from ptomaine poison-
15 ing they couldn't collect a nickel, because the state offers
16 no protection.

17 That shows you how silly this particular thing
18 of state immunity is. I hope you will vote against this
19 amendment.

20 THE CHAIRMAN: Does any delegate desire to
21 speak in favor of the amendment?

1 Delegate Hanson, do you desire to speak in
2 opposition?

3 DELEGATE HANSON: I have a point of parliamentary
4 inquiry.

5 THE CHAIRMAN: State the inquiry.

6 DELEGATE HANSON: I would like to preface my
7 inquiry with a very brief statement and that is I would
8 very much be in favor of a policy change which this
9 section recommends, but I can see some very severe problems
10 with its immediate implementation upon the adoption of
11 the Constitution and I should like to inquire of the Chair
12 or the chairman of the committee whether, should Section
13 7 as reported be adopted, the Committee would recommend
14 and recommend strongly to the Convention that the
15 transitional legislation to accompany the Constitution or
16 the schedule for the effectuation of the Constitution
17 contain a provision that this section would not become
18 effective until the General Assembly had an appropriate
19 opportunity to review the status of liability and provided
20 adequate laws to make this reversal a useful and easy
21 one.

1 THE CHAIRMAN: Delegate Hanson, the Chairman
2 of the committee has already announced if Amendment 9
3 is defeated he proposes to offer his amendment D which
4 is on your desk. Have you seen it?

5 DELEGATE HANSON: Yes, I have seen it and I
6 will oppose Amendment D because I think it only states
7 the obvious --

8 THE CHAIRMAN: It states the converse of
9 Section 7. That is why I wondered if you had seen it.

10 THE CHAIRMAN: Delegate Kiefer, do you desire
11 to reply to Delegate Hanson?

12 DELEGATE KIEFER: To answer first what would
13 happen on the adoption of Section 7 as proposed, the com-
14 mittee has already recommended that there be a period
15 in the transitory provisions that would allow for the
16 legislature to close the door where it thought desirable,
17 but I also rise in opposition to this motion to make one
18 further motion.

19 I have heard from Delegate Gallagher and
20 several other delegates that this committee did not
21 consider this, that we have gone into this thing just

1 haphazardly; in the first place I want to explain we have
2 not gone into this matter haphazardly.

3 We heard testimony and we made studies of this
4 thing and I want to report to you, ladies and gentlemen,
5 there are three ways in which this matter of sovereign
6 immunity has been eroded away, one is by Constitutional
7 recognition that the legislature should do something.
8 That is what 26 states have done.

9 Secondly, it has been taken care of by legis-
10 lative action in other states. Thirdly, some states,
11 Arizona, is an example, the courts have taken the bull
12 by the horns, saw the theory is no longer valid and they
13 have overruled it.

14 I think the committee was maybe a little over-
15 exuberant, that is why I am proposing an amendment, what
16 we are saying is that this concept belongs in the
17 Constitution and I hope you will keep it in the Consti-
18 tution or put it in the Constitution.

19 THE CHAIRMAN: Delegate Bennett, do you desire
20 to speak in favor of the amendment?

21 DELEGATE BENNETT: Mr. Chairman, in favor of the

1 amendment, yes, sir.

2 THE CHAIRMAN: You may proceed.

3 DELEGATE BENNETT: This is merely for the
4 purpose of stating an answer to Delegate Hanson's remarks
5 that the state in its political subdivisions might have
6 some time to prepare and not allow a lot of suits to
7 accumulate during this period.

8 Assuming that Delegate Scanlan's amendment is
9 rejected and the Kiefer amendment is approved, I intend
10 with the indulgence of the Chair to offer an amendment
11 in the first few words reading as follows: "In causes of
12 action arising after July 1, 1972, the doctrine of sovereign
13 immunity", and so on. That is a specific transitional
14 provision.

15 THE CHAIRMAN: Any other delegate desire to
16 speak in opposition?

17 Delegate Churchill Murray.

18 DELEGATE C. MURRAY: Mr. Chairman and fellow
19 delegates, I have lived with this for a great many years.
20 However, all that I want to say to you at this point is
21 that in considering your vote, you might, if you please,

1 consider, that with whatever evils this may bring and
2 it is apt to bring some evils, some misrepresentation and
3 that sort of thing, but basically, if you -- I think if
4 you do away with your sovereign immunity you spread the
5 misfortunes of those who are injured amongst a great many,
6 in this case about 3 million people, instead of it remain-
7 ing centered in the unfortunate person who is injured.

8 There is a basic principle here as to spreading
9 the loss.

10 THE CHAIRMAN: Any other delegate desire to
11 speak in favor of the amendment?

12 Delegate Grant.

13 DELEGATE GRANT: Point of parliamentary inquiry,
14 Mr. Chairman.

15 THE CHAIRMAN: State the inquiry.

16 DELEGATE GRANT: In the event that Delegate
17 Scanlan's amendment is approved, will Delegate Kiefer's
18 amendment still be in order?

19 THE CHAIRMAN: It will not. If Delegate
20 Scanlan's amendment 9 is approved, the section will be
21 deleted completely.

1 It would be possible, of course, for Delegate
2 Kiefer to -- just a second, your amendment is an entire
3 substitution for the section. The Chair is in error.

4 The amendment would be in order. It would
5 be necessary to rephrase somewhat the preliminary language.
6 This could be done.

7 Delegate Scanlan.

8 DELEGATE SCANLAN: I am cautioned myself not
9 to speak twice even on my own motions, but I do feel I
10 would like briefly to make two comments.

11 Chairman Kiefer stoutly proclaims that the com-
12 mittee went into this at great length and considerable
13 data was assembled. I direct the attention of the assembly
14 to the two platitudinous paragraphs found on page 3
15 which purports to explain their conclusion and their
16 recommendation.

17 There is not a fact, there is not a statistic,
18 there is not a piece of information upon which any intelli-
19 gent delegate could base a decision. But even there
20 they conclude where I come out, it is the role of the
21 legislature to determine to what extent and in what manner

1 the government shall be immunized.

2 If they believe that they should never advance
3 the proposition set forth in Section 7. Secondly, I beg
4 of the assembly to remember that we are sitting as a Consti-
5 tutional Convention, not a state legislature. Yesterday
6 we tried to write a little Wagner Act on this floor. Now
7 they want us to write a little tort claims act and in a
8 few minutes you will be asked to write a full employment
9 act.

10 We are a Constitutional Convention, not a legis-
11 lature. We have a legislature. I beg you to start acting
12 like a Convention and stop acting like a legislature.

13 We will not only have a better Constitution,
14 you might get out of here by New Years.

15 THE CHAIRMAN: Delegate White.

16 DELEGATE WHITE: Mr. Chairman and members of
17 the Convention, it is with some reluctance that I rise to
18 pose this amendment, but I feel that I have a duty to
19 perform.

20 I am puzzled by one question and that is; how
21 shall we reconcile brevity with the idea of meeting the

1 needs of the people who sent us down here.

2 Now, if we decide in behalf of brevity, I have
3 one suggestion, and I am not attempting to be facetious.
4 This Convention has the authority to abolish the entire
5 Constitution as it is now written and go home to leave it
6 all to the legislature. We can just tear the whole
7 Constitution up by a majority vote and go home and let the
8 writers on Style do their job while we are at home having
9 Christmas dinner.

10 Now, we have reached an important issue. We
11 have discussed at some length the possible payment of
12 damages to citizens who have been injured by governmental
13 action in the acquisition of land or by some governmental
14 action which might inadvertently hurt a citizen.

15 Now, if we are going to have this same test
16 I suggest that we give this some thought. Since we have been
17 here we have learned that the legislature does not have
18 adequate facilities. We have been here enough to look
19 around. They don't even have rooms, they don't have
20 clerks, they don't have sufficient staff. They don't have
21 sufficient buildings and yet we are heaping all these

1 duties on them and saying let them do it.

2 I think I voted to my good friend on the right
3 consistently almost, I think it is time to put a brake on
4 it, and I ask you to defeat this amendment.

5 Thank you, Mr. Chairman.

6 THE CHAIRMAN: Does any other delegate desire
7 to speak in favor of the amendment?

8 (Cries of "Question.")

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Willoner to speak in opposition.

11 DELEGATE WILLONER: Mr. Chairman, I speak in
12 opposition to this amendment, and I think my voting has
13 demonstrated a consistent position for Constitutional
14 purity, more consistant than Mr. Scanlan, because I was
15 the only delegate to vote against the militia provision.

16 This is a prohibition against the state, prohibit-
17 ing the state from punishing an individual as in the taking
18 of property, we thought so much about property that we
19 thought the damages should be repayed. Here we have a
20 chance to protect people.

21 Should the word go out that we think more of

1 property than people, it would seem to me to be a horrible
2 principle.

3 This is a prohibition on the government to keep
4 them from pleading sovereign immunity. I think it is
5 important. The history of over 200 years is that this
6 doctrine has been in this state, it has not been eroded
7 enough to make it a serious inroad.

8 Thirty other states have eliminated this by
9 court decision. There is a whole body of law on this.
10 Every person in this state is liable except the state of
11 Maryland. We can live with it, the state of Maryland
12 should be able to.

13 THE CHAIRMAN: Are you ready for the question?

14 (Cries of "Question.")

15 THE CHAIRMAN: The Clerk will ring the
16 quorum bell.

17 The question arises on the adoption of Amendment
18 9. A vote Aye is a vote in favor of the amendment; a
19 vote No is a vote against. Cast your vote.

20 Has every delegate voted? Does any delegate
21 desire to change his vote?

1 The Clerk will record the vote.

2 There being 38 votes in the affirmative and 72
3 in the negative, the motion fails and the amendment is
4 rejected.

5 The pages have distributed to your desk amend-
6 ment AJ. Please mark it Amendment 8. It has already
7 been adopted.

8 Delegate Kiefer, do you now desire to offer
9 your amendment D?

10 DELEGATE KIEFER: Yes, Mr. Chairman.

11 THE CHAIRMAN: This will be Amendment Number 10.
12 It has already been distributed to your desk. The amend-
13 ment has been proposed by Delegate Kiefer. Is there a
14 second?

15 (The motion was seconded.)

16 THE CHAIRMAN: The Clerk will read the amendment.

17 MR. QUILLEN: Amendment Number 10 to Committee
18 Recommendation R&P-2 by Delegate Kiefer.

19 On page 3 Section 7 Right to Sue State and
20 Local Governments strike out all of lines 4 through 9,
21 inclusive, and insert in lieu thereof the following:

1 "The State, its instrumentalities and political
2 subdivisions may be sued in the courts of the state
3 to the extent and in the manner as may be provided by
4 the General Assembly."

5 THE CHAIRMAN: Delegate Bennett, for what purpose
6 did you rise a few moments ago?

7 DELEGATE BENNETT: I rise to speak to the
8 amendment.

9 THE CHAIRMAN: I think we better let the sponsor
10 speak to it and then you will be recognized.

11 DELEGATE KIEFER: Mr. Chairman and ladies
12 and gentlemen of this Committee: I will be very brief
13 because I think enough has been said on the whole and
14 well said. I want to call/your attention that when
15 families fight among themselves and this committee had its
16 moments, that is one thing, but when we get attacked from
17 the outside, we stand together.

18 The Committee went a little too far in Section
19 7. It opens the door completely and requires the legis-
20 lature to close it. In the 26 states that have done this,
21 all of the states as far as I know, and I haven't checked

1 each individual Constitution, but in our check on this,
2 all of the states do about what my amendment would do and
3 do not open the floodgates as proposed in Section 7.

4 Therefore I urge the adoption of this amendment.

5 THE CHAIRMAN: The Chair recognizes Delegate
6 Case.

7 DELEGATE CASE: Will the Chairman yield to
8 a question?

9 THE CHAIRMAN: Delegate Kiefer.

10 DELEGATE KIEFER: Yes.

11 THE CHAIRMAN: Delegate Case.

12 DELEGATE CASE: Chairman Kiefer, what confuses
13 me about the subject, I understand your amendment to be
14 declaratory of the laws that now exist. Is this not
15 true?

16 THE CHAIRMAN: Delegate Kiefer.

17 DELEGATE KIEFER: I suppose it does except that
18 it states the concept, again as I pointed out before, it
19 states the concept of sovereign immunity being diminished
20 by legislative action.

21 This has not been stated in our Constitution

1 prior to this time. It has been important enough to
2 have been included in some 26 other state constitutions.

3 THE CHAIRMAN: Delegate Case.

4 DELEGATE CASE: There are a lot of things that
5 are the law of the land that are not stated in the
6 Constitution and I ask you this. What earthly good could
7 these three or four lines serve since all they do in my
8 judgment, and I now take it in yours, is to declare what
9 the law is today?

10 THE CHAIRMAN: Delegate Kiefer.

11 DELEGATE KIEFER: Delegate Case, in the preface
12 to my remarks originally, this committee considered many
13 matters that were sent to it on proposals.

14 This was one that came to us by two or three
15 different proposals. It was obvious to us that many of
16 the concepts sent to this committee on personal rights
17 and preamble, dealt with governmental policies rather
18 than just personal rights and that is why this Recommenda-
19 tion Number 2 contains this concept of governmental
20 policies.

21 We thought these were important enough and

1 enough people in this Convention sent us these matters and
2 appeared before us and our research indicated that it
3 was important enough in other Constitutions that we
4 include it as a matter of statement of policy in this
5 Constitution.

6 This is why I urge the adoption of this amend-
7 ment.

8 DELEGATE CLARK: Delegate Hanson, do you desire
9 to speak against the amendment?

10 DELEGATE HANSON: At the proper time, but I
11 would like to ask Delegate Kiefer a question.

12 DELEGATE CLARK: Delegate Kiefer, do you yield
13 to a question?

14 DELEGATE KIEFER: Yes.

15 DELEGATE CLARK: Delegate Hanson.

16 DELEGATE HANSON: I share the same concerns
17 stated by Delegate Case, that you have restated the law
18 and made an unnecessary restatement of it.

19 I would like to know further whether you are
20 speaking for the committee or against the committee?

21 DELEGATE CLARK: Delegate Kiefer.

1 DELEGATE KIEFER: The majority report, the ma-
2 jority adopted the concept set forth in Section 4. The
3 amendment, I assume would be my own amendment and I don't
4 know how many other members of the committee would join
5 in it.

6 Delegate Weidemeyer has indicated his acceptance
7 of it.

8 DELEGATE CLARK: The Chair recognizes Delegate
9 Moser.

10 DELEGATE MOSER: I have a question of Chairman
11 Kiefer again.

12 DELEGATE CLARK: Delegate Kiefer, would you
13 yield?

14 DELEGATE KIEFER: Yes, sir.

15 DELEGATE CLARK: Delegate Moser.

16 DELEGATE MOSER: It says in line 9 "As may
17 be provided by the General Assembly", that means by law?

18 DELEGATE CLARK: Delegate Kiefer.

19 DELEGATE KIEFER: Yes.

20 DELEGATE CLARK: Delegate Moser.

21 DELEGATE MOSER: Where you use the phrase "by law"

1 or where it is intended to be used in Amendment Number 10
2 and where it is in fact used in Section 7 as it now stands,
3 I take it also that you mean a law which is not restricted
4 to a public general law as we know it, but a law which could
5 vary from county to county, from municipality to munici-
6 pality, is that not correct?

7 DELEGATE CLARK: Delegate Kiefer.

8 DELEGATE KIEFER: Delegate Moser, I don't want
9 to undertake to say what the legislature would do but
10 it would be a matter within the powers of the legislature
11 and if the legislature has the authority to designate
12 or make different rules or different laws for different
13 localities or subdivisions that is up to the legislature,
14 I don't mean to restrict this, I don't mean to be cute
15 about it.

16 We simply say that the General Assembly may
17 remove the sovereign immunity for the state and its
18 political subdivisions as it shall deem proper and in the
19 manner and nature it shall deem proper.

20 DELEGATE CLARK: Delegate Moser.

21 DELEGATE MOSER: I take it, then, Chairman Kiefer

1 and I am thinking not so much about counties but munici-
2 palities which vary so much throughout the state, by this
3 you mean that the General Assembly should have un-
4 restricted authority in this regard, and I think the answer
5 is yes.

6 DELEGATE CLARK: Delegate Kiefer.

7 DELEGATE KIEFER: Subject to whatever pro-
8 visions the local government section may have put on this.
9 If it is a matter of style for the Committee on Style and
10 Drafting that is one thing. We are not trying to do any-
11 thing except to provide that the General Assembly may
12 provide how this immunity may be changed.

13 If they can delegate that authority down to
14 municipalities, that is up to the legislature and the
15 municipalities.

16 DELEGATE CLARK: Delegate Moser.

17 DELEGATE MOSER: I am really not fencing with
18 you or trying to get you to say something you don't want
19 to say. What I am really trying to do is to find out the
20 intention of the committee.

21 I thought you had said it earlier. It isn't

1 a question of what the local government committee suggests,
2 it is really a question of what your committee intended.
3 I think you really intend with regard to either one of
4 these provisions that the General Assembly has to have
5 broad authority to treat units of government differently
6 if this is required in such a manner and I think it would
7 be, don't you?

8 DELEGATE CLARK: Delegate Kiefer.

9 DELEGATE KIEFER: Delegate Moser, you sort of
10 put me in the position of a housewife that just finished
11 taking a First Aid course.

12 Maybe I ought to explain that Delegate Clark,
13 because really I don't want to be in such a position, but
14 she had just finished this First Aid course and she was
15 very excited about how to save lives. On her way home
16 she saw a man lying face down on the side of the street.

17 She stopped the car and tried to give him artificial
18 respiration. He looked up and said, "I don't know what
19 you are doing but you are lousing up my job of passing
20 this wire down to people in the manhole."

21 So if I am lousing up the people in the manhole,

1 I am sorry.

2 DELEGATE CLARK: Delegate Clagett.

3 DELEGATE CLAGETT: Delegate Kiefer, would you
4 have any objection to adding in lieu of the period at
5 the end of the sentence the words "by public general
6 law"?

7 DELEGATE CLARK: Delegate Kiefer.

8 DELEGATE KIEFER: I don't know if you are down
9 in the manhole or not, but I would have no objection to
10 that, if that would be helpful.

11 Delegate Clark: Delegate Clagett.

12 DELEGATE CLAGETT: I would suggest to you that
13 that would avoid any discrimination by the General Assembly
14 in favor of one instrumentality or political subdivision
15 and required uniformity throughout the entire state with
16 respect to all instrumentalities and political subdi-
17 visions.

18 DELEGATE CLARK: This is what I think we would
19 intend and I would be perfectly acceptable to that amend-
20 ment.

21 DELEGATE CLAGETT: Then may we add "by public

1 general law" after "assembly"?

2 DELEGATE CLARK: There are 30 seconds left.

3 Delegate E. Churchill Murray.

4 DELEGATE C. MURRAY: I don't want to ask a
5 question. I want to make a statement. Would you rather
6 that I wait until a later time?

7 DELEGATE CLARK: Delegate Murray, what was
8 that?

9 DELEGATE MURRAY: I do not want to ask the maker
10 a question, I want to make a statement. Would you rather
11 I wait until after this time?

12 DELEGATE CLARK: I think it would be best. The
13 Chair has to ascertain whether Delegate Kiefer accepts
14 the modification mentioned by Delegate Clagett.

15 DELEGATE KIEFER: Mr. Chairman, I just don't
16 really know, maybe instead of saying the General Assembly
17 we should just say "by law."

18 DELEGATE CLARK: Do you wish to make this clari-
19 fication? We have to have unanimous consent to do it.

20 DELEGATE KIEFER: Mr. Chairman, I have to say
21 to you that it is the concept that I have that this matter

1 would be left entirely to the legislature, to the
2 General Assembly and I don't really particularly want
3 to tie the hands of the legislature by making any addi-
4 tional change.

5 I think leaving it the way it is is better.

6 DELEGATE CLARK: Very well. The time for
7 questions has passed. Does anyone desire to speak
8 against the amendment?

9 Delegate Kosakowski.

10 DELEGATE KOSAKOWSKI: Mr. Chairman, I arise to
11 speak against the amendment. The vote indicated on this
12 amendment is indicative of the true meaning that the
13 majority of the committee desired. I defend the majority
14 report.

15 We mean what we say of the concept, No amendments
16 and I believe in not watering this concept down. When
17 you vote to scale an amendment down, you really meant you
18 want Section 7 as it is. That is the true meaning that
19 the committee wanted and I don't believe that Delegate
20 Weidemeyer wants to water anything down and I will urge
21 you to defeat the amendment and support the majority

1 report.

2 DELEGATE CLARK: The Chair recognizes Delegate
3 Willoner.

4 DELEGATE WILLONER: Mr. Chairman, I just wanted
5 to make it abundantly clear that Delegate Kiefer was not
6 speaking for the majority, that I was delegated that
7 power, and in answer to the question of Delegate Moser,
8 the question being whether the General Assembly should have
9 broad power in dealing with this under Section 7 of the
10 majority report, the answer would be yes, because we
11 wanted to give the General Assembly the freedom in handling
12 this problem so they wouldn't be forced to eliminate
13 governmental immunity -- I mean forced to keep governmental
14 immunity, because they might have to protect all munici-
15 palities rather than one small one, that they might have
16 had a particular reason to support.

17 In answer to Delegate Moser's question the
18 answer would have been yes, and that was the intention
19 of the majority. If he has any other question I would
20 like to answer it.

21 DELEGATE CLARK: Does anyone wish to speak in

1 favor of the amendment at this time?

2 Delegate Scanlan.

3 DELEGATE SCANLAN: I suppose the Kiefer amendment,
4 its soul and overpowering quality is its complete, utter
5 lack of any meaning. However, with so many other meaning-
6 less clauses that you insist on inserting in the Consti-
7 tution, maybe it will go unnoticed.

8 DELEGATE CLARK: Does anyone desire to speak
9 against the amendment?

10 Delegate E. Churchill Murray is recognized.

11 DELEGATE MURRAY: I must speak against the
12 amendment and for the same reason that Delegate Scanlan
13 supports it. I think it pulls the road out from under
14 our intent.

15 Also, the question of the legislature making one
16 provision for one political subdivision, another for
17 another political subdivision, this is either right or
18 it is wrong and the action for the entire state and I think
19 our action for the entire state should be in one direction
20 or the other.

21 DELEGATE CLARK: Delegate Clagett, do you speak

1 for the amendment?

2 DELEGATE CLAGETT: Mr. Chairman, I wish to
3 propose an amendment. I suggested to Delegate Kiefer that
4 we simply add the words "by general law" at the end of the
5 sentence. I understand that that has not been accepted.
6 Therefore, feeling that it is quite important, I would move
7 the amendment to include those words "by public general
8 law."

9 DELEGATE CLARK: Delegate Kiefer has said he
10 would prefer not to accept that amendment and we have to
11 have unanimous consent, otherwise it would have to be
12 printed or presented.

13 DELEGATE CLAGETT: Therefore I propose to
14 print such an amendment and have it before this assembly.
15 It is a matter of great importance in order to preserve
16 a degree of uniformity throughout the state and to avoid
17 getting the General Assembly squarely back into the
18 area of local legislation and this body should appreciate
19 that fact and in order to avoid that confusion, I feel
20 that the amendment is essential.

21 DELEGATE CLARK: Delegate Kiefer.

1 DELEGATE KIEFER: Mr. Chairman, I would not
2 object to this body acting on the amendment. I didn't
3 mean that. If you want to add it to an amendment, I won't
4 stand on ceremony. I just said I wouldn't change my
5 language.

6 DELEGATE CLARK: Delegate Clagett.

7 DELEGATE CLAGETT: Therefore, I would move
8 to Amendment Number 10 to include the words at the end
9 of the sentence "by public general law."

10 DELEGATE CLARK: Is there any objection to
11 considering this amendment without having the printed
12 amendment before us?

13 If there is none, the Chair rules we can vote
14 on the amendment, without having it before us.

15 Is there any further discussion?

16 Delegate Weidemeyer.

17 DELEGATE WEIDEMEYER: Mr. President, I would
18 like to ask Delegate Clagett if he would add an " s" on
19 law because I can see that the legislature may not enact
20 removal of sovereign immunity by one law and it may be
21 embodied in several laws and therefore the "s" should be

1 added.

2 DELEGATE CLARK: Delegate Clagett.

3 DELEGATE CLAGETT: Mr. Chairman, I would have no
4 objection. That is a matter for Style. "By public
5 general law means a series of laws or a single law but
6 not necessarily at the same time. There can be a sub-
7 sequent law that would follow. But I would have no
8 objection in order that the Committee on Style would know
9 the full intent and therefore would add the letter "s"
10 on the word law.

11 DELEGATE CLARK: Delegate Dukes.

12 DELEGATE DUKES: Are we speaking only on the
13 Clagett amendment? I wish to speak to Mr. Kiefer's
14 amendment, but I will wait until the appropriate time.

15 DELEGATE BAMBERGER: Mr. Chairman.

16 DELEGATE CLARK: Delegate Bamberger.

17 DELEGATE BAMBERGER: I rise to request the
18 Chairman of the Committee on Local Government to explain
19 to me what the amendment proposed by Delegate Clagett
20 will do and will not do.

21 DELEGATE CLARK: Delegate Moser, will you answer

1 that inquiry?

2 DELEGATE MOSER: I would suggest, Mr. Chairman,
3 that Delegate Bamberger knows as well as I do what it will
4 do or what it won't do. I will be glad to explain what
5 I think it will do myself.

6 If you put in public general law or laws, I
7 don't think there is any difference between the two, since
8 Style and Drafting are working on this, and it will
9 probably end up reading "by law" which would carry with it
10 the general law requirement, the effect would be to
11 require the legislature when they deal with this subject
12 to deal with all municipalities similarly and with all
13 counties similarly.

14 I think that probably would be the only effect.
15 I have some question as to what this would do with respect
16 to authorities. I think, though, that the public general
17 law requirement would not effect the ability to differen-
18 tiate between one authority and another.

19 As a matter of information, simply because
20 I think if this is in, the legislature must have complete
21 authority to deal with the problem any way they want to,

1 otherwise it is highly restrictive and very inefficient.
2 I am going to vote against Delegate Clagett's amendment.
3 I hope everybody else does the same thing.

4 DELEGATE CLARK: Delegate Moser , will you
5 yield to a question?

6 DELEGATE MOSER: Yes.

7 DELEGATE BAMBERGER: How will the legislature
8 act if we do not adopt Delegate Clagett's amendment and
9 if we retain the language "provided by the General
10 Assembly", how may they act?

11 DELEGATE CLARK: Delegate Moser.

12 DELEGATE MOSER: Some of my friends back here
13 have been suggesting how this one should be answered.
14 The answer is that they may act any way that they want to.
15 The point is that this is an area of such importance that
16 the General Assembly should be able to act any way that
17 they want to insofar as varying the effect of the
18 sovereign immunity provisions.

19 Municipalities vary tremendously one from the
20 other, and I think it is most important that they be able
21 to act in a variegated way and that would be the result

1 in answer to your question, Delegate Bamberger.

2 DELEGATE CLARK: Delegate Fox.

3 DELEGATE FOX: Mr. Chairman, I rise to speak in
4 support of Delegate Clagett's amendment. I think if we
5 allow the General Assembly to say that one municipality
6 has sovereign immunity or a big one does and a little one
7 doesn't, we are back in the morass of local legislation.
8 A municipality could waive its own sovereignty if they
9 wanted to do so and I see nothing wrong with that. I urge
10 you not to get us back into the morass of local legis-
11 lation which we would be in unless we adopt Delegate
12 Clagett's amendment.

13 DELEGATE CLARK: Delegate Clagett.

14 DELEGATE CLAGETT: Mr. Chairman, I believe the
15 point has been made and I hope that it has been one which
16 has been fully digested. What the omission of these four
17 words would be is that the General Assembly could provide
18 that Prince Georges County shall be sued to the full limits
19 of whatever the ability to pay of that subdivision may be,
20 whereas Saint Mary's County or Baltimore City would not
21 be subject to suit at all. I think

1 that is so extreme that it makes it ridiculous.

2 If we are going to permit the subdivision to
3 be sued or the State to be sued, it should be uniform across
4 the board throughout the entire State in the same manner
5 that when the Court of Appeals rules upon a similar question
6 it equally affects all subdivisions across the board. By
7 putting these words in, you understand that when the
8 General Assembly acts, it acts with a due consideration
9 of the effect of its action upon the political subdivisions
10 as one class, upon the municipalities as one class.

11 The local government committee has decided and
12 recommended to this Body and this Body has approved that
13 when dealing with the municipalities the General Assembly
14 shall do so uniformly across the board treating them as one
15 class, namely they act only by general law and that is
16 specifically provided. There should be no exception so far
17 as the counties are concerned or with respect to any other
18 governmental unit.

19 I strongly urge that we go forward with keeping
20 the General Assembly upon its own proper level, acting for
21 the best interests of the entire State and all subdivisions

1 within the State rather than to put it back in the area of
2 local legislation where it will vary from county to county
3 and from city to city and other governmental subdivisions
4 individually.

5 DELEGATE CLARK: Delegate Moser.

6 DELEGATE MOSER: Mr. Chairman, I can see that we
7 may be getting into a parliamentary morass by what I am
8 about to suggest, but let me suggest it anyway.

9 I would like to ask the mover of the amendment
10 to the amendment if he would accept an amendment to the
11 amendment to the amendment which would provide "By the
12 General Assembly" with respect to counties, but "By law
13 or otherwise" with respect to municipalities.

14 I can think of no other way to eliminate
15 some of these smaller municipalities than to pass this
16 without a provision to permit the General Assembly to
17 bury a law with respect to municipalities. I had no
18 feeling that there would be a problem with respect to
19 counties.

20 DELEGATE CLARK: The Chair rules Delegate
21 Clagett could modify his amendment to the amendment by

1 unanimous consent, otherwise we couldn't.

2 DELEGATE CLAGETT: Mr. Chairman, I could not
3 accept that amendment. I find no difference between a
4 tort action where someone has fallen into a hole in
5 Baltimore City and breaks his or her back from the same
6 individual falling into a hole in Leonardtown and breaking
7 his or her back. I do not feel that there ought to be
8 any variation insofar as the municipalities are concerned.

9 DELEGATE CLARK: Very well.

10 DELEGATE HANSON: I suggest we are fast approach-
11 ing if we have not exceeded or gone past the nadir of
12 debate on this subject in which we are piling the uncertain
13 on top of the unnecessary in an amendment we are probably
14 going to defeat anyway. It seems to me that we ought to
15 vote. (Applause.)

16 DELEGATE CLARK: Delegate Dulany.

17 DELEGATE DULANY: I was going to make the same
18 point.

19 DELEGATE CLARK: The question arises on the
20 amendment to the amendment which is Delegate Clagett's
21 amendment which we will call 10A and it adds the words

1 "by public general laws" at the end of the sentence in
2 amendment No. 10 which is Delegate Kiefer's amendment.

3 Are you ready for the question? A vote "aye"
4 adopts the amendment to the amendment, a vote "no" rejects
5 it.

6 Cast your votes.

7 Has everyone voted? Does anyone desire to
8 change his vote? If not, the clerk will take the roll.

9 There being fifty-four votes in the affirmative
10 and fifty-two in the negative, the motion is adopted, the
11 amendment is adopted.

12 The question now arises on amendment No. 10 as
13 amended. Is there any discussion?

14 (Cries of "Question.")

15 DELEGATE CLARK: Delegate Chabot.

16 DELEGATE CHABOT: Mr. Chairman, I will be very
17 brief. I just wanted to point out that the constitutional
18 purists have said keep things out of the Constitution and
19 now they are saying put it in because in this case they
20 happen to want it.

21 We have been told we should not waste all this

1 time on the matter, but I suggest that these several hours
2 of debate have resulted only because amendment 9 was
3 offered even though we had some perfectly good language
4 reported by the Committee. I suggest we support the
5 Committee and vote down the amendment.

6 DELEGATE CLARK: Delegate Dukes, do you wish
7 the floor?

8 DELEGATE DUKES: Just a moment, but I must tell
9 you this. I decided before I came down that I thought I
10 would stay in one area in which a **contribution** could be
11 made. I filed a 35-page memoranda in which I traced the
12 common law and took four states that abolished it and I
13 think they had the information. I suggest to you again
14 watch who you heard from.

15 I suggested earlier that it would be well to
16 observe those who would speak for and against the amendment;
17 before us first you heard from big city lawyer Scanlan
18 from Washington, D. C., it is very rare that I have
19 observed Delegate Scanlan speaking even once on a subject
20 about which he knows little.

21 Today you have been treated to an even more

1 rare occurrence. Delegate Scanlan has spoken two or three
2 times on a subject of which he knows nothing and he has
3 asked questions also.

4 We next heard from big-city lawyer Moser who
5 spoke twice on the subject and also asked considerable
6 questions.

7 Then we moved to big-city lawyer Gallagher who
8 is now smiling at me across the room and from there to
9 big-city lawyer Bamberger who not only has spoken twice on
10 the subject and asked a number of questions, but if I am
11 not mistaken, he is a partner in the law firm which is
12 getting a retainer from the City of Baltimore and one of
13 whose jobs is to secure the defeat of this particular
14 amendment.

15 You, then, were treated to a discussion between
16 big-city lawyer Bamberger and big-city lawyer Moser. They,
17 of course, were discussing the Clagett amendment and
18 trying to figure out which way to vote in order to enable
19 the City of Baltimore to receive special treatment.

20 You will notice at the conclusion of that that
21 Delegate Bamberger leaned over his desk to confer with

1 Delegate Moser and that then both Delegate Bamberger and
2 Delegate Moser voted against the Clagett amendment which
3 would have required uniform treatment throughout the State.
4 I say don't put it in the Constitution.

5 This will allow Maryland to do whatever it
6 needs to to protect the subdivisions.

7 DELEGATE CLARK: Delegate Bamberger.

8 DELEGATE BAMBERGER: I rise on a statement of
9 personal privilege. I feel I have to reply to the big
10 lawyer from whatever place he comes from.

11 I have no idea what may be the position of any
12 partners or associates in my law office or of the City of
13 Baltimore with respect to sovereign immunity.

14 For myself, I am opposed to the concept of
15 sovereign immunity. My only position is that I believe
16 that it is a question on which we do not have the facts and
17 I therefore only urge that we leave the question to be
18 decided by the General Assembly when they had some idea of
19 what grievance it inflicted upon the people and what cost
20 it might inflict upon political subdivisions.

21 DELEGATE CLARK: Any further discussions?

1 DELEGATE MARVIN SMITH: I am a country lawyer
2 from one of the smallest counties here. I consistently
3 represent plaintiffs. I don't like the doctrine of
4 sovereign immunity. However, I think there is a respon-
5 sible way to proceed and the responsible way is by the
6 adoption of this amendment.

7 DELEGATE CLARK: Any further discussion?

8 DELEGATE BENNETT: Parliamentary inquiry, if
9 this amendment is defeated and it can be defeated, the
10 question recurs on the majority report of the Committee,
11 does it not?

12 DELEGATE CLARK: No, sir, I don't think so.
13 Further amendments could be offered, but there would be
14 no further vote on Section 7.

15 DELEGATE BENNETT: The only way to get the
16 excellent language in the Committee report, assuming this
17 amendment is approved, would be to offer another amendment
18 resorting to the --

19 DELEGATE CLARK: If this amendment is approved,
20 it will take the place of Section 7 in the Committee
21 recommendation.

1 DELEGATE BENNETT: You would have to defeat this
2 amendment and all other amendments in order to get the
3 Committee language.

4 DELEGATE CLARK: It can only change by amend-
5 ments. When the amendments cease, we can pass on to the
6 next section.

7 DELEGATE BENNETT: I confess, then, I don't
8 really know how to vote. I want the Committee language
9 in its original form. Now how to get that, I don't know.

10 DELEGATE CLARK: Delegate Miller.

11 DELEGATE MILLER: Mr. Chairman, isn't it true
12 that if you wanted Section 7 in its original form as
13 stated by the Committee, you would vote no on all amend-
14 ments to Section 7 so that Section 7 would remain in the
15 majority report?

16 DELEGATE CLARK: If this is defeated and there
17 are no further amendments, then we will have Section 7 as
18 it is.

19 Delegate Churchill Murray.

20 DELEGATE CHURCHILL MURRAY: I hope we do exactly
21 as Delegate Miller has just outlined even if we have to

1 adopt some other amendment thereafter to satisfy everyone.
2 I don't see any other clearcut way to do this. Let us
3 defeat this, go back to the Committee recommendation.

4 DELEGATE CLARK: If there is no further discus-
5 sion, the question now arises on the adoption of amendment
6 No. 10 as amended.

7 Ring the quorum bell. A vote Aye adopts; a
8 vote No is against.

9 Cast your votes.

10 Has everyone voted? Anyone desire to change
11 their votes? If not, the clerk will take the roll.

12 Twenty-five votes in the affirmative, eighty-
13 five votes in the negative. The motion fails. The
14 amendment as amended is rejected.

15 The Chair recognizes Delegate James.

16 DELEGATE JAMES: I would like to speak on a
17 point of personal privilege.

18 DELEGATE CLARK: State your privilege.

19 DELEGATE JAMES: I would like to ask the Chair
20 and the Members of the Delegation to take cognizance of
21 the fact that in the gallery we have Mr. Victor Walton

1 and his class of thirty-seven junior and senior students
2 from the Aberdeen High School. They are in the balcony
3 at the rear of the Chairman. (Applause.)

4 DELEGATE CLARK: The Chair is very glad to
5 welcome you people here today.

6 Are there any further amendments to Section 7?
7 The Chair recognizes Delegate Dulany.

8 DELEGATE DULANY: I would like to announce
9 the photographer is here today for those who want their
10 pictures taken. If there are any who haven't submitted
11 their names and want their pictures taken, submit it to
12 the Public Information Office.

13 Also, if there are any committees who want
14 their pictures taken, contact the photographer through the
15 Public Information Office.

16 DELEGATE GALLAGHER: I would like to say to
17 the members of the Legislative Branch Committee that when
18 we recess before we go to lunch that we will meet here for
19 arrangements have been made to take a picture of the
20 Committee on the Legislative Branch.

21 Adding an additional thing, after consulting

1 with Mr. Willoner, I voted against the Scanlan amendment,
2 I voted with the Clagett amendment, and with the Kiefer
3 amendment. I trust I will be welcomed back into the
4 kingdom.

5 DELEGATE CLARK: Delegate Wagandt.

6 DELEGATE WAGANDT: A point of parliamentary
7 inquiry, a reference to Section 7 as it now reads, is
8 law to be interpreted as a public general law?

9 DELEGATE CLARK: Delegate Kiefer.

10 DELEGATE KIEFER: I don't know, the last time
11 I got into that it was like a bird caught in a badminton
12 game, it was interesting but my tail feathers got ruffled.
13 I don't know how to answer that.

14 DELEGATE WAGANDT: I would offer an amendment
15 to have this read "Public General Law".

16 DELEGATE CLARK: Delegate Clagett.

17 DELEGATE CLAGETT: Mr. Chairman, I don't think
18 there is any question but as previously written Section 7
19 would be subject to Section 7.06 as previously recommended
20 by the Committee on Local Government and adopted by this
21 Committee of the whole would mean by general law.

1 DELEGATE CLARK: Does that satisfy you,
2 Delegate Wagandt?

3 DELEGATE WAGANDT: If this is on the record and
4 Mr. Penniman understands this to be the case, it is fine
5 with me.

6 DELEGATE CLARK: The Chair recognizes Delegate
7 Needle.

8 DELEGATE NEEDLE: Mr. Chairman, I suggest that
9 this matter has been resolved by this Committee by voting
10 in favor of the amendment No. 10. We indicated that we
11 wanted for this section to be applied by the General
12 Assembly by public general law and even though amendment
13 No. 10 was defeated I suggest that this Committee has
14 expressed it for the benefit of the Committee on Style
15 and Drafting.

16 When the Committee on Preamble and Personal
17 Rights drafted Section 7, they didn't know whether by
18 law would mean general law or whether it would permit
19 general variations.

20 I submit this Committee has indicated that they
21 want for this to be applied by public general law.

1 DELEGATE PENNIMAN: I do not think what was done
2 in an amendment which was later defeated can be binding
3 on what was kept. I would prefer to have some kind of
4 expression by the group so that I do know what the meaning
5 of the word "by law" is, otherwise I will get into the
6 morass of stating meanings.

7 DELEGATE WAGANDT: I think I would like to offer
8 an amendment as follows: On line 8 in Section 7 on page 3
9 add the word "public general" after the word "by" so this
10 will now read "and in the manner as shall be permitted by
11 public general law."

12 (Whereupon, the motion was seconded.)

13 DELEGATE CLARK: Does everyone understand that?
14 This will be amendment No. 11.

15 Are you ready for the question?

16 Delegate Case.

17 DELEGATE CASE: Mr. Chairman, with your indulgence
18 I would like to ask Delegate Clagett to answer a question
19 or two about this if he will take the floor and yield.

20 DELEGATE CLAGETT: I yield.

21 DELEGATE CASE: Delegate Clagett, under the

1 shared powers concept of the local government section,
2 is it not true that a local unit of government, let us
3 confine it to a county, would have been able with or with-
4 out this particular provision in the Constitution to waive
5 or abrogate the doctrine of sovereign immunity?

6 DELEGATE CLAGETT: Yes.

7 DELEGATE CASE: Is it not also true as the
8 Committee report now reads without the Clagett-Wagandt
9 amendment the same thing would be true?

10 DELEGATE CLAGETT: No. I don't think the same
11 thing would be true because here you have a conflict
12 between what is judicial and what is legislative and because
13 of that conflict, I think that public general qualifies
14 the situation, but if you find that there is no conflict
15 between judicial and legislative function, then the answer
16 would be yes.

17 DELEGATE CLARK: Delegate Case.

18 DELEGATE CASE: So that the answer to that
19 question is yes, so the Committee can follow this, let me
20 state what I am getting at. If there was nothing in the
21 Constitution and the shared powers concept is adopted,

1 then a county could waive the doctrine. Under this section
2 the county could still waive the doctrine if it wanted to
3 in its wisdom. The proposal that has been made by the
4 Wagandt amendment in effect withdraws that power and would
5 require that any waiver of the doctrine shall be done at
6 a state level by public general law.

7 DELEGATE CLARK: Delegate Clagett.

8 DELEGATE CLAGETT: Yes.

9 DELEGATE CLARK: Delegate Case, you may proceed.

10 DELEGATE CASE: So that, Delegate Clagett, what
11 you have said up to this point is that your amendment or
12 the Wagandt amendment which you really thought of first,
13 I think would carve out another exception to the shared
14 power concept that we all fought so hard for and would,
15 in effect, say that in this area, the exemption could only
16 be provided by public general law.

17 Now, you are the greatest advocate in this
18 chamber for the shared power concept and I want to know
19 why you think there ought to be an exception to it in this
20 particular case. It seems to me, if I may say so, that this
21 is a kind of governmental power that we can safely leave to

1 the local political subdivisions.

2 DELEGATE CLARK: Delegate Case, you have
3 fifteen seconds to get an answer.

4 Delegate Clagett.

5 DELEGATE CLAGETT: The answer to your question
6 is that we are dealing with suits against the State in
7 line 6, its instrumentalities and political subdivisions,
8 I believe in this area, dealing with sovereign immunity
9 there is a preemption and the State would be preempting
10 the field and when ~~it pre-empts the field~~, it should be
11 required to act by general law across the board affecting
12 all of the instrumentalities or political subdivisions
13 uniformly.

14 DELEGATE CLARK: Your time is up.

15 The motion before the House for this Committee
16 is on the adoption of amendment No. 11 which is the Wagandt
17 amendment which adds "public general" after the word "by"
18 and before the word "law".

19 Delegate Macdonald.

20 DELEGATE MACDONALD: Mr. Chairman and Fellow
21 Delegates, I think that Delegate Case has made a very good

1 point and a very good observation. I think this amendment
2 by Delegate Wagandt probably goes further than the sponsor
3 intended.

4 As has been brought out here, it would prohibit
5 the counties to which we have given home rule the oppor-
6 tunity of legislating on this subject. I would request
7 the sponsor of the amendment to withdraw this. Maybe we
8 can come back to it later, but I think this is something
9 that we may be able to work out over the lunch hour.

10 DELEGATE CLARK: Delegate Wagandt.

11 DELEGATE WAGANDT: If I may re-offer it, I
12 would be happy to withdraw it at this time and discuss it
13 with Delegates Macdonald and Clagett during lunch as has
14 been suggested.

15 DELEGATE CLARK: Do you withdraw the amendment?

16 DELEGATE WAGANDT: I seem to get some shaking
17 of heads. I would like to get a chance to confer with the
18 individuals who have raised this question. Perhaps we
19 could step out into the lounge and not hold up the
20 proceedings of this Committee.

21 DELEGATE CLARK: Very well. The amendment is

1 withdrawn and can be taken up at a later time.

2 If there are no objections, we will move on to
3 Section No. 8. Are there any amendments to Section No. 8?

4 DELEGATE BENNETT: Can't we proceed and adopt
5 Section 7 subject to further amendment?

6 DELEGATE CLARK: No, sir. That is not the
7 procedure. It is still open to amendment. We don't adopt
8 it section by section as we go along.

9 Delegate Scanlan.

10 DELEGATE SCANLAN: I have an amendment, amendment
11 No. R to Section 8. Briefly, the amendment would strike
12 the section.

13 DELEGATE CLARK: This will be amendment No. 12,
14 marked "R" at the top. The clerk will read the amendment.

15 MR. QUILLEN: This is Amendment No. 12 to
16 Committee Recommendation No. R&P-2 by Delegate Scanlan:

17 On page 3 Section 8 Right of Removal of Civil
18 Cases strike out all of lines 11 through 20, inclusive.

19 DELEGATE CLARK: The Chair recognizes Delegate
20 Scanlan.

21 DELEGATE SCANLAN: Although somewhat shaken, I

1 remain undeterred to keep out of the Constitution things
2 that have no necessity for insertion there. This refers
3 to the right of removal in civil cases. It concerns the
4 practice where the mere filing of an affidavit requires
5 that the Court transfer the case out of the jurisdiction.
6 This rule has been essentially abused in my own county.
7 I know in other jurisdictions it has also been subject to
8 abuse.

9 The right of a removal should be guaranteed
10 by **statute** or by rule of Court as is the case in Federal
11 jurisdiction and in most states.

12 I won't occupy the time and attention of this
13 Convention by belaboring the point. The right of removal
14 has been abused and while the right should be preserved
15 it should be preserved in the Legislature. The abuse of
16 this right of removal is one of the contributing factors.
17 This should be left to the General Assembly and Courts
18 and not enshrined forever in the Constitution.

19 DELEGATE CLARK: The Chair recognizes Delegate
20 Kiefer.

21 DELEGATE KIEFER: Mr. Chairman, there have been

1 a number of amendments to this. This is a particular
2 section which is ~~the~~ special interest and special expertise
3 of Delegate Willoner and I delegate him to answer all
4 questions.

5 DELEGATE CLARK: The Chair recognizes Delegate
6 Willoner.

7 DELEGATE WILLONER: We agreed on a Committee
8 amendment. I would feel that that Committee amendment
9 should be the first matter that we take up instead of the
10 elimination of the section altogether because it becomes
11 very difficult to debate the issue. I believe it was
12 amendment --

13 DELEGATE CLARK: The Chair will rule that this
14 is in order. You can offer your amendment. Is this your
15 wish?

16 DELEGATE WILLONER: All right. I would like to
17 offer, then, amendment H.

18 DELEGATE CLARK: The Chair recognizes Delegate
19 Moser.

20 DELEGATE MOSER: There are a number of amendments
21 including ~~amendment~~ X which I have offered. In view of

1 the Chair's ruling that the Committee amendment should be
2 considered first, I would respectfully request that any
3 delegates who are contemplating suggesting amendments to
4 this section have theirs distributed so that at least they
5 will be before the Convention at the time each amendment
6 is voted on.

7 I would much prefer voting personally on the
8 complete elimination and then going forward to those
9 amendments which are the simplest first, since mine
10 happens to be the next simplest. I do think we ought to
11 have all of them in front of us.

12 DELEGATE CLARK: Very well. The pages will
13 distribute all amendments to section 8 so that the delegates
14 will have them before them.

15 The amendment that you wish to take up first is
16 H, is that right?

17 DELEGATE WILLONER: Yes.

18 DELEGATE CLARK: Delegate Scanlan.

19 DELEGATE SCANLAN: As I understand the Chair's
20 answer to Mr. Moser's suggestion, all the various amendments
21 that would amend the section will be taken up prior to the

1 amendment which has for its sole purpose the elimination
2 of this section. I don't know if my amendment is going to
3 be voted up or down. If my amendment passes it would be
4 unnecessary to consume the time and attention of this
5 Assembly in debate upon a section that may not remain in
6 the Constitution.

7 I suggest in the interest of time whatever your
8 feeling may be on my amendment you deal with it first. If
9 it loses, you can proceed to the other amendments.

10 DELEGATE CLARK: Are you willing to accept this?

11 DELEGATE WILLONER: I think it would be a better
12 procedure. I think that is the most logical way for everyone
13 to vote on this.

14 DELEGATE CLARK: Very well. We will go back to
15 Delegate Scanlan's amendment and vote on that first.

16 Delegate Mitchell.

17 DELEGATE MITCHELL: Mr. President, I think it
18 would be appropriate if Delegate Willoner would state to
19 the Body what the Committee deliberated on with regard to
20 this section, how it felt about this section, what its
21 intentions are which I think would give meaning to the

1 discussions which will follow.

2 DELEGATE CLARK: Delegate Willoner.

3 DELEGATE WILLONER: Well, to do it as quickly
4 as possible, the intent of the Committee was originally
5 to protect the right that we now have to remove civil
6 cases absolutely, but after discussion with several Members
7 of the Body after the Committee report was prepared, I would
8 call it a compromise position, but in any event a position
9 that would obviate the problems referred to by Delegates
10 Scanlan and Powers in a debate that we had on this when it
11 was in the judicial section; Committee amendment H was
12 prepared which allows the right of removal, and I will read
13 it, in all actions at law eliminating the equity aspects
14 of it that is in the Committee report because the Court of
15 Appeals in a rather strange but I think rather proper
16 decision eliminated equity out of the present Constitution,
17 if
18 in all actions in law/a party suggests in writing that it
19 cannot have a fair and impartial trial in which the action
20 is pending, the Court shall rule that it be moved out of
21 the county for trial.

In other words, this would contemplate regulation

1 which would permit the Court to require an election within
2 a reasonable time prior to trial, if they felt ten days or
3 thirty days prior to trial that an election would have to
4 be made, then this would be a proper regulation.

5 The decisions in this area, because of the
6 nature of the right, ~~have been~~ extremely restrictive and
7 have prohibited any regulation in this area whatsoever.
8 The present provision in Section 8 is just far too restrict-
9 ive and allows no flexibility. This provision we feel
10 would permit the right of removal which we think is a
11 valid and lawful safety valve and where a party feels in
12 a particular jurisdiction that he cannot have a fair trial
13 that he can, without having to establish this to a Court
14 **except** by way of an affidavit, that this could be regulated
15 by the Court of Appeals so that it would not be abused,
16 but it is sufficiently and importantly enough a safety
17 valve that it should be preserved.

18 While we have approved the Four-Tier System
19 we should not abandon any rights that Maryland citizens
20 have today ^{as} unnecessary and that is why we came up with this
21 Committee amendment and that is why we would oppose Delegate

1 Scanlan's removal of the provision altogether.

2 It has since 1805 been in the Constitution.
3 The Court of Appeals has said that the State of Maryland
4 has always thought this was such an important matter that
5 in 1805 an amendment was proposed and this amendment has been
6 carried on in various forms since 1805. It is not a
7 minor right and it is a right that we think should be
8 continued.

9 DELEGATE CLARK: Delegate Henderson.

10 DELEGATE HENDERSON: I rise to speak in favor
11 of the Scanlan amendment. As far as the right of removal
12 is concerned, the point can always be raised under the
13 due process clause if there is a likelihood of prejudice
14 growing out of any particular situation in the community.

15 Now, the matter is presently within the power.
16 It is a procedural matter, it within the joint power of
17 the Legislature and the Court of Appeals to implement this
18 right of removal by rule and that rule can be altered if
19 the Legislature disapproved of the rule enacted by the
20 Court of Appeals. It is within that joint operation which
21 we have approved in the Judicial Branch.

1 I suggest that the Committee recommendation
2 which would limit it to rule by the Court of Appeals
3 would strip the Legislature of that joint authority and
4 I would prefer to see it taken out of the Constitution
5 altogether as the Scanlan amendment proposed.

6 I might say one more word in connection with
7 this. The absolute right of removal which exists under
8 the present Constitution has been more abused than any
9 provision in the Constitution. Cases have been ready for
10 trial and at the last moment this absolute right of removal,
11 this affidavit comes in and it has been used as a delaying
12 tactic all over the State by counsel for insurance
13 companies and others, but particularly in that field, I
14 would say.

15 It seems to me that the matter should be left
16 in the joint authority of the Legislature and the Court of
17 Appeals insofar as it may go beyond the protection afforded
18 by the Fourteenth Amendment. I would urge you to support
19 the Scanlan amendment.

20 DELEGATE CLARK: The Chair recognizes Delegate
21 Child to speak against the amendment.

1 DELEGATE CHILD: Mr. Chairman, I rise to speak
2 against the amendment for the simple reason that Delegate
3 Willoner's amendment is really re-writing the section which
4 is now Section 8, so that we have been asked to remove a
5 section, which is Section 8, without really getting the
6 combined and last judgment of the Committee on it.

7 I think that the Committee ought to look at
8 Section 8 which is Delegate Willoner's amendment which is
9 a substitute for Section 8 before they vote Section 8 down.

10 Now, I will agree that we recognize that this
11 rule has been abused in the Willoner amendment and we give
12 the Court of Appeals the right to limit that rule and we had
13 in mind that the Court of Appeals if a party wanted to
14 move a civil case should give notice so many days before
15 the case is set for trial so that there would be no surprise
16 on the other side and no injustice done, but I don't think
17 that we should eliminate Section 8 until we see what
18 Willoner and the other Members of the Committee have agreed
19 upon as a substitute for Section 8.

20 For that reason, I oppose the Scanlan amendment.

21 DELEGATE CLARK: Delegate James.

1 DELEGATE JAMES: Mr. Chairman and Fellow
2 Delegates, I want to argue for the Scanlan amendment with
3 all the earnestness that I can muster.

4 I have practiced law since 1937 and I can say
5 that over that period of time it is my considered opinion
6 that the use of the power to remove has been an implement
7 in the obstruction of justice. Anyone with experience in
8 this field knows that it is very seldom used to really
9 get a fair trial. It is used simply to delay and how can
10 you have a good system of administration of justice when
11 you have built into it a ready made system of delay.

12 Now, the present law is rather incongruous.
13 It refused to grant an absolute right of removal in serious
14 criminal cases, but it gives an absolute right of removal
15 in civil cases.

16 In other words, where a man may be incarcerated,
17 the matter of removal is strictly in the discretion of
18 the Court, whereas if the matter involves property, no
19 matter how small the amount of property involved, then an
20 absolute right of removal pertains. How could the law be
21 more absurd?

1 The proposals here are almost a perpetuation
2 of the present law. A later section proposes in felony
3 cases that there be an absolute right of removal. In
4 misdemeanor cases and there are very serious cases of
5 misdemeanor involving very serious incarceration, this
6 would still be a matter of discretion. How could anything
7 be more absurd to say where a man's freedom is at stake it
8 is in the discretion of the Court, but where a man's
9 property is at stake, there is an absolute right of removal?

10 I would like to earnestly request that the Members
11 of this Convention support the amendment.

12 DELEGATE CLARK: Anyone desire to speak against
13 the amendment?

14 Delegate Raley.

15 DELEGATE RALEY: A point of inquiry. I somewhere
16 got lost. We have a Scanlan amendment and we have a
17 Willoner amendment that I think has been discussed but not
18 distributed. Which one are we talking about? What one
19 are we going to talk about? Which one are we going to
20 vote on?

21 DELEGATE CLARK: The Scanlan amendment, No. 12,

1 that will be voted on first.

2 Is there any further discussion?

3 Delegate Johnson.

4 DELEGATE JOHNSON: Mr. Chairman and Fellow
5 Delegates: The right of removal in civil cases and for
6 that matter the right of removal in criminal cases is
7 one of the most fundamental and I submit one of the most
8 important rights that an individual has when called upon
9 to be faced with the Courts in this State. I have already
10 been told that this right is a right that has been in
11 our Constitution for over a hundred years. It appears in
12 Section 7 of Article 2.

13 I submit that the proponents of this measure
14 to remove this particular section from our Constitution
15 know full well the likelihood that in all probability they
16 will in effect be doing away with the right of removal in
17 either civil or criminal cases.

18 I ask you to consider with me the following
19 prospects. We have been told that the citizens of this
20 State shall not have any say in the selection of their
21 judges. We have been told that the citizens of this State

1 shall not have any say in the election of qualified attorneys
2 to the office of judge, and now the proponents of this
3 measure want to tell you and the other citizens of this
4 State that our fellow citizens shall have absolutely no
5 say in who shall judge them and who shall judge their cases.

6 If we remove this right of removal, we will set
7 down, we will take out, I beg your pardon, the precedent
8 that has been established in our Constitution. If we
9 will remove this right of removal, we will not have the right
10 of removal as we have in Rule 542 of the Rules of Procedure.

11 There has been a move afoot for years to do away
12 with the right of removal because of the charge that
13 although sometimes correct, this right of removal is used
14 for delay. I submit that many, many times it enables a
15 litigant to have a fair and impartial trial either in front
16 of a fair and impartial judge or a fair and impartial jury.
17 If you remove this right of removal, you are telling
18 litigants everywhere that they have absolutely no choice.
19 They must take that judge or this jury to which their case
20 is assigned.

21 Consider that very carefully and please, please

1 vote down this amendment.

2 DELEGATE CLARK: Any further discussion?

3 Delegate Mudd.

4 DELEGATE MUDD: Mr. Chairman, I rise to speak
5 in support of the Scanlan amendment. This matter was
6 debated to some extent as the Members of the Committee of
7 the Whole may recall at the time we considered the recom-
8 mendation of the Committee on the Judicial Branch.

9 At that time the Minority report suggested
10 this amendment or addition to the Judicial article,
11 "There shall be the right of removal in each case before
12 the Superior Court and District Court in a manner described
13 by rule or by law."

14 That amendment was proposed as I recollect and
15 rejected. We feel that the identical question is now
16 presented on the Scanlan amendment.

17 As indicated by Judge Henderson, the right in
18 criminal cases is otherwise protected in the Constitution.
19 The amendment proposed by Delegate Johnson to the Judicial
20 article did nothing more than to suggest that the right be
21 nothing more than the right prescribed by law or by rule.

1 That will be perpetuated by law or by rule so we feel there
2 is no necessity to include it in the Constitution.

3 DELEGATE CLARK: Delegate Grant.

4 DELEGATE GRANT: I have heard a great deal of
5 discussion about the right of removal being abused where
6 the case originates. One of the advantages of practicing
7 in a remote place, you get a lot of transfer cases. Just
8 listen to the local counsel tell the reasons they have for
9 transferring cases. It will make your hair stand on end.
10 This gives you right of removal in equity cases.

11 We have had right of removal in criminal cases.
12 If you needed to get a fair judge you had to have the judge
13 say himself that he was unfair and I submit to you if you
14 could expect him to make that decision fairly you wouldn't
15 have had to ask for the removal.

16 DELEGATE CLARK: Delegate Carson.

17 DELEGATE CARSON: Mr. Chairman and Ladies and
18 Gentlemen, I rise in support of the amendment. By taking
19 out Section 8 you do not destroy the right of removal. All
20 you do is leave it up to the General Assembly and the
21 Court of Appeals by rule as they shall operate to define

1 this area.

2 This has been in the past a most misused
3 procedure. It has not in the past constitutionally applied
4 to equity cases. I think it very clear that our Legislature
5 and our Court of Appeals can certainly handle this area
6 and do it well and wisely as time goes by, but to write
7 into the Constitution an absolute where an absolute is
8 most unwise seems to me very lamentable, especially in the
9 larger counties. This right has been so much abused in
10 the past that it should not be in the Constitution but
11 left to better sources to be flexible and to be well done.

12 I urge your support of this amendment.

13 DELEGATE CLARK: Delegate Weidemeyer.

14 DELEGATE WEIDEMEYER: Mr. President and Members
15 of the Committee, I urge that the amendment be rejected.
16 For a long time it has been historic that our people who
17 had to go into court on a law case would know, they knew
18 that they had the Constitutional right to remove it from a
19 court in an area where they felt they could not have a
20 fair and impartial trial and if it is any kind of right, if
21 it is a right that we do not want to abandon, then we ought

1 not to leave it up to the legislature or the rule of court.

2 The only objection I have heard to it is that
3 some have abused it. Granting that some have abused it, a
4 lot of others have used it correctly in order to obtain
5 justice and we ought to protect the rights of all of our
6 litigants in civil cases.

7 I agree with Delegate Grant that I think it
8 was an inequity before and make it applicable and say that
9 this does apply in equity cases.

10 What do they complain of, that they go in at
11 the last minute after the witnesses are ready. I have had
12 it happen to me, but I have had to remove cases where I
13 felt I couldn't have a fair or impartial trial either by
14 a prejudiced jury or by the court himself.

15 Sometimes the judge sitting high and mighty
16 rapping the gavel can make a lot of prejudicial remarks.
17 In equity he has the full sway of it.

18 We can leave this in the Constitution and we
19 can take care of it. One little simple amendment would
20 cure all of their objections and if we took out the word
21 pending in 19 and added filed within a reasonable time

1 prior to the date set for trial and provided by law and
2 there the Legislature can regulate how many days prior to
3 the date set for trial that the request for removal can
4 be filed, I think that will cure all the objections and
5 therefore I think that this vital constitutional right of
6 all civil litigants should be protected in the Constitution
7 as it has been for so many years past.

8 DELEGATE CLARK: Any further discussion?

9 Delegate Macdonald.

10 DELEGATE MACDONALD: Parliamentary inquiry, Mr.
11 Chairman. If this amendment is passed, will other amend-
12 ments to this section be in order?

13 DELEGATE CLARK: The Chair understands that this
14 is a proper procedure. There is a variation, not to this
15 same section, but a substitute can be made. It could just
16 be a new paragraph. It wouldn't necessarily have to be
17 a substitute. There wouldn't be a substitute but a new
18 paragraph on the same subject could be offered.

19 Delegate Bamberger.

20 DELEGATE BAMBERGER: Mr. Chairman, I rise to
21 speak in favor of this amendment, and again I think I must

1 point out that I think we are playing a lawyer's game.

2 First, the removal of Section 8 from the
3 Constitution will not, I repeat, will not take away from
4 anybody the right to have their case taken before another
5 Court or another jury if they cannot get a fair and impartial
6 trial in that particular court.

7 Delegate Henderson said that. It is quite true
8 under the due process clause of this Constitution and the
9 United States Constitution, everyone has a right to a fair
10 trial, but Section 8 permits the perpetuation of a shell
11 game by lawyers.

12 Let me tell you what happens. You are a litigant
13 in your case, you, your lawyer, your witnesses have come
14 to court to try that case. You have left your place of
15 work. You have requested your witnesses at inconvenience
16 to them to leave their places of work to come to court.
17 At least twenty people have come to court to sit on that
18 jury and the lawyer on the other side walks in with an
19 affidavit in his pocket and all it says is that he requests
20 that this case be sent to some other court because he cannot
21 have a fair or impartial trial there.

1 He does not have to say why. He merely states
2 the conclusion and so you come to court at considerable
3 expense to you, the witnesses, the jury, and everybody who
4 is engaged in making that Court operate and suddenly you
5 find out because the lawyer had this affidavit in his
6 pocket everybody goes home.

7 I have had a personal experience with that here
8 in this county. In Anne Arundel County they passed a rule
9 which said if you put the county to all that expense of
10 calling those jurors in and the judge coming in and
11 everybody being ready to try that case and you come in
12 within twenty-four hours before it is time to hear that
13 case and say I am not going to try it here and say I want
14 to go somewhere else, you are going to bear the expense,
15 you are going to pay the two hundred dollars and that is
16 fair and that is what ought to happen, but they can't
17 enforce that rule because we have a constitutional right
18 to have a case pulled out of court one minute before it is
19 ready to start when everybody there is ready to try it.

20 The perpetuation of Section 8 perpetuates a
21 shell game by lawyers at the expense of the counties, the

1 Courts, and jury. It does not take away any fundamental
2 right to a fair trial.

3 I urge you not to reject the amendment.

4 DELEGATE CLARK: Anyone desire to speak in
5 favor of the amendment?

6 Delegate Mitchell.

7 DELEGATE MITCHELL: I wish to speak against
8 the amendment. We have spent almost ten days setting up
9 the physical structure for the administration of justice
10 and this section is concerned with a substantive provision
11 for the administration of justice exists only where the
12 Courts themselves have been deficient in setting up the
13 regulations of the use of this right.

14 Now, we are supposed to with this system that
15 has been presented to us, we are getting a higher quality
16 of the Judiciary, we are getting a more efficient system,
17 we are concentrating the rule making power in the Court of
18 Appeals, the highest level of the Judiciary, and it seems
19 to me that when Delegate Bamberger has said, the problems
20 he has enumerated are the problems that will be corrected
21 by this new and more efficient Judiciary and the system

1 that we have set up.

2 Again, I use Mr. Scanlan's words, let's don't
3 throw out the baby with the bath water. Let us clean up
4 the problems, correct the problems, and retain the right.

5 (Cries of question.)

6 DELEGATE CLARK: Any further discussion?

7 Delegate Churchill Murray.

8 DELEGATE CHURCHILL MURRAY: Before the question,
9 did Delegate Willoner have an amendment? Has he proposed
10 an amendment? Because I think it would affect the vote of a
11 lot of us.

12 DELEGATE CLARK: Delegate Murray, the question
13 before us is on amendment No. 12 which is Delegate Scanlan's
14 amendment, which would delete the whole section completely.
15 If this prevails, then we can take up the subject again,
16 not as an amendment, not as a substitute, but as a new
17 paragraph, as I understand it.

18 Delegate Weidemeyer.

19 DELEGATE WEIDEMEYER: Mr. President, I suggest
20 that I am having an amendment prepared to insert in our
21 proposal or recommendation on line 19, add to the word

1 pending file_d within a reasonable time prior to the date
2 set for trial --

3 DELEGATE CLARK: Delegate Weidemeyer, we are
4 on this amendment at this time.

5 DELEGATE WEIDEMEYER: I offered that with the
6 hope that this amendment of Scanlan's would be rejected
7 so that we can give careful consideration to it.

8 DELEGATE CLARK: All right. You have had a
9 chance to speak on it.

10 Delegate Marvin Smith.

11 DELEGATE MARVIN SMITH: I don't think the
12 impassioned plea of Delegate Mitchell can go unanswered.
13 The abuses which Delegate Bamberger alluded to occur not
14 because of failure on the part of Judiciary, but the
15 provision in the Constitution which grants the absolute
16 right of removal.

17 DELEGATE CLARK: Are you ready for the vote?
18 The question arises on the adoption of the Scanlan amendment.

19 Delegate Mitchell.

20 DELEGATE MITCHELL: Mr. President, I must answer
21 Delegate Smith.

1 DELEGATE CLARK: Yes?

2 DELEGATE MITCHELL: We have an absolute right
3 to freedom of speech, but it is subject to regulation.
4 You can get out out in the picket line, but you can't
5 exercise it so that people can't pass on the streets. All
6 these other rights are subject to regulation. The same
7 thing is true and that is not true and I think it is an
8 insult to the intelligence of this Body.

9 DELEGATE CLARK: The question arises on the
10 adoption of amendment No. 12. A vote Aye adopts the
11 amendment, a vote No rejects it.

12 Has everyone voted? Does anyone desire to
13 change his vote?

14 Delegate James, would you please vote Aye for
15 me, please?

16 DELEGATE JAMES: Yes.

17 DELEGATE CLARK: The Clerk will take the roll.
18 There being sixty-three votes in the affirmative and fifty-
19 four in the negative, amendment No. 12, the motion carries
20 and amendment No. 12 is adopted.

21 The Chair recognizes Delegate Willoner.

1 DELEGATE WILLONER: I understand under your
2 ruling at this point I can offer amendment H.

3 DELEGATE CLARK: Would you agree to take up
4 Delegate Moser's amendment first, amendment No. X?

5 Delegate Moser.

6 DELEGATE MOSER: Under the circumstances, I
7 don't care to offer that amendment.

8 DELEGATE CLARK: Very well.

9 Delegate Willoner.

10 DELEGATE WILLONER: I would offer amendment No.
11 H.

12 DELEGATE CLARK: Do you have amendment No. H
13 which would be amendment No. 13?

14 The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No. 13 to Committee
16 Recommendation No. R&P-2 by Delegate Kiefer.

17 On page 3 Section 8 Right of Removal of Civil
18 Cases strike out all of lines 14 through 20, inclusive,
19 and insert in lieu thereof the following:

20 "In all actions at law, a party after suggestion
21 under oath in writing that he cannot have a fair and

1 impartial trial in the court in which the action is
2 pending, the court shall order the action removed to another
3 district or county for trial. The Court of Appeals by rule
4 shall provide for reasonable regulation of this provision."

5 DELEGATE CLARK: Delegate Macdonald, for what
6 reason do you rise?

7 DELEGATE MACDONALD: Parliamentary inquiry,
8 Mr. Chairman.

9 I have an amendment W and I would like to
10 inquire at what appropriate moment may I offer that. I
11 don't know if it has been called to the Chairman's
12 attention.

13 DELEGATE CLARK: Delegate Macdonald, you can
14 offer this at any time that amendment 13 is on the floor
15 as a substitute.

16 DELEGATE MACDONALD: May I offer this after 13
17 has been introduced, may I offer this as an amendment in
18 the nature of a substitute to 13?

19 DELEGATE CLARK: Yes, that is correct.

20 DELEGATE MACDONALD: I would like to do that
21 at the appropriate time.

1 DELEGATE CLARK: Delegate Adkins.

2 DELEGATE ADKINS: Parliamentary inquiry. I
3 have understood the ruling of the Chair to be once this
4 Convention moved to delete something from the Constitution
5 it is no longer subject to amendment. How is this now
6 open to further amendment?

7 DELEGATE CLARK: Well, sir, that would seem
8 logical, but the Parliamentarian advises me that another
9 section on the same subject can be offered.

10 DELEGATE ADKINS: May I **then** not ask the
11 Parliamentarian **if** this is inconsistent with prior
12 rulings which the Parliamentarian has made before this
13 Convention?

14 DELEGATE CLARK: Pardon me, I didn't get the
15 last part of your question.

16 DELEGATE ADKINS: I say, would the Chair direct
17 to the Parliamentarian a question as to whether or not this
18 is not inconsistent with prior rules made by the Chair in
19 prior rulings before this Convention.

20 DELEGATE CLARK: The Parliamentarian asks me to
21 refer to page 38 of Robert's Rules of Order. This is not

1 inconsistent to what we have done before and a new
2 ~~amendment~~ can be offered and this is not the first time
3 it has been done here.

4 The Chair recognizes Delegate Moser.

5 DELEGATE MOSER: Mr. Chairman, another point of
6 parliamentary inquiry.

7 DELEGATE CLARK: Delegate Moser.

8 DELEGATE MOSER: I stated before I don't care
9 to offer amendment X, but I am somewhat in the same position
10 as Delegate Macdonald is. If one of these other amendments
11 is adopted, then I would like to be in a position to offer
12 amendment X to ~~whatever amendment~~ ~~ver~~ happens to be adopted.

13 I am perfectly happy to keep things exactly as
14 they are, but I wouldn't be if the Convention adopts this
15 amendment, whatever the number is that is before us now,
16 and I would be happy to come either before Delegate Macdonald
17 or after Delegate Macdonald, but I don't know quite how to
18 do it.

19 DELEGATE CLARK: Delegate Henderson.

20 DELEGATE HENDERSON: Mr. Chairman, I would
21 suggest as a matter of parliamentary observation that the

1 proposed amendment now restores the very thing which we
2 voted down in the Scanlan amendment. We voted to eliminate
3 something, this amendment without any change whatsoever
4 except for the addition of clarifying language which was
5 really proposed before the vote, it undertakes, in other
6 words, to reverse without reconsideration a determination
7 which we have just made in adopting the Scanlan amendment.
8 I suggest that is out of order.

9 DELEGATE CLARK: Delegate James.

10 DELEGATE JAMES: Mr. Chairman, I am very
11 strongly in favor of keeping this out of the Constitution.
12 However, I do feel that Delegate Willoner will agree that
13 he had priority. I think in a sense by doing this we owe
14 him a courtesy by taking a vote on his amendment no matter
15 how opposed I am to the proposition. I think this is only
16 the fair thing to do. I think these technicalities should
17 not be incited upon.

18 DELEGATE CLARK: The Chair rules that there is
19 a substantive difference in this paragraph **from** the one
20 that we deleted.

21 Delegate Weidemeyer.

1 DELEGATE WEIDEMEYER: Mr. President, may we
2 pass over this matter and revert to the section a little
3 later on inasmuch as the Scanlan amendment struck the
4 existing paragraph and any attempts to amend what has been
5 stricken might be out of order and therefore I have prepared
6 an amendment which offers an entire new section similar to
7 this section stricken but with some different wording and
8 I would like to have the opportunity of presenting that at
9 the proper time and ask that we pass over this and go on
10 to another matter and then revert to it.

11 DELEGATE CLARK: Delegate Scanlan.

12 DELEGATE SCANLAN: I suggest a way out of the
13 apparent parliamentary dilemma. There is no question
14 Delegate Willomer withdrew his amendment on the assumption
15 he would be able to introduce it and I agree with Senator
16 James on this.

17 We have debated this subject at considerable
18 length in which most facets were argued. I would not want
19 to debate that again. If we could push in terms of those
20 who wanted to hear more debate would vote for reconsideration
21 and those who were satisfied that a just conclusion had

1 been arrived at would vote against we could rise or fall
2 as a test of the sense of the House of whether we want to
3 proceed further. I guess I can move to reconsider my own
4 amendment.

5 DELEGATE CLARK: I think that the proper way
6 would be to move that the Committee rise and go into
7 convention and then put this on an order and then we could
8 vote on it.

9 Delegate Storm.

10 DELEGATE STORM: The vote on the Scanlan amend-
11 ment was taken with the direct understanding and ruling
12 by the Chair that if it passed the Willoner amendment could
13 be offered. That was the way the vote was put.

14 It appears to me to continue ruling the same
15 way, we will get through with this. If we get the Willoner
16 amendment up that accomplishes what everybody wants, a
17 reasonably regulated right of removal, so I suggest that you
18 do allow the Willoner amendment to be offered and we vote
19 it up or down to get the sentiment of the House without
20 any further debate.

21 DELEGATE CLARK: Allow the Chair to make an

1 inquiry to Delegate Kiefer.

2 Is there a report supposed to be given on
3 Section 9?

4 DELEGATE KIEFER: Yes, sir.

5 DELEGATE CLARK: A Minority report?

6 DELEGATE KIEFER: No, but the original report
7 is to be given by Delegate Mitchell.

8 If I can anticipate what you are saying, I tried
9 last night and again this morning to get people together on
10 the kind of language that would satisfy those who feel that
11 there should be something in the Constitution. If you
12 coalesce this past offer and get on with the next section,
13 maybe those people who have these various amendments could get
14 together and come up with one that would satisfy Delegate
15 Willoner and Delegate Weidemeyer and everybody else, and if
16 not, I would suggest that we go on with Delegate Willoner's
17 amendment after lunch.

18 DELEGATE CLARK: I believe that is a good
19 suggestion.

20 Is Delegate Mitchell ready with her report?

21 DELEGATE MITCHELL: I think Delegate Willoner

1 and Delegate Kiefer have come up with the language which
2 the Committee suggests. I think it embodies most of the
3 recommendations of the Members of the Convention.

4 I just want to say again that we are in the Bill
5 of Rights which is the very foundation --

6 DELEGATE CLARK: Delegate Mitchell, the Chair
7 would like to ask you if you are prepared to give your
8 report on Section 9 and we would take this up after lunch.

9 DELEGATE MITCHELL: No, Mr. Chairman. I would
10 rather give it after this has been dealt with and I think
11 it is only fair to Mr. Willoner that he be allowed to
12 give his amendment now.

13 DELEGATE CLARK: He will have this opportunity
14 after lunch.

15 DELEGATE MITCHELL: Mr. President, I am not
16 prepared to give it now.

17 DELEGATE CLARK: For what purpose does Delegate
18 Marion rise?

19 DELEGATE MARION: We were in the middle of a
20 parliamentary hassle and because I thought the matter had
21 been debated pretty thoroughly and we should try to dispose

1 of it, I was going to inquire of the Chair whether or not
2 a proper method of proceeding parliamentary based upon what
3 I seem to recall as to similar situations in which we have
4 been involved in the past would be to have Delegate
5 Macdonald introduce his amendment and then have Delegate
6 Moser introduce his amendment and whichever way that ended
7 up we would vote up or down. That way all the amendments
8 would have a chance of getting consideration by the House.

9 THE CHAIRMAN: The Chair has been briefed on
10 the situations which have developed. As I understand,
11 Amendment No. 13 has been ruled in order. The Chair
12 concurs. It is open for discussion. Delegate Macdonald's
13 amendment may be offered as a substitute for Amendment No.
14 13. If it is rejected, Amendment X may be offered as a
15 substitute depending upon the action. We can vote and
16 move forward.

17 The matter now before us is Amendment No. 13.
18 It appears to be introduced by Delegate Kiefer, but the
19 Chair was advised that Delegate Willoner will speak to the
20 amendment.

21 Delegate Willoner, you may proceed.

1 DELEGATE WILLONER: In the debate on the Scanlan
2 amendment, if you notice, the entire debate went to the
3 question or almost the entire debate went toward the ques-
4 tion of the abuse of this right and that there are times in
5 these civil cases when the people bring the affidavit down
6 on the day of trial and it is of great expense to the
7 litigant and the Court.

8 We have obviated that problem by including in
9 Amendment No. 13 the language that the Court of Appeals
10 by rule shall provide for reasonable regulation of this
11 provision.

12 Mr. Chairman, I would like to have unanimous
13 consent. Judge Henderson raised the valid point this does
14 not reflect the concurrent power theory of the Judiciary
15 article and I would like to have unanimous consent by
16 the General Assembly.

17 THE CHAIRMAN: I don't think you mean that
18 because gramatically it would then say the Court of
19 Appeals by act of the General Assembly.

20 DELEGATE WILLONER: The Court of Appeals by
21 rule or the General Assembly by law.

1 THE CHAIRMAN: The request is that the amend-
2 ment be modified by adding at the end of line 11 the
3 words "or the General Assembly by law".

4 Is there any objection?

5 The Chair hears none. The amendment will be
6 considered as modified.

7 Delegate Willoner.

8 DELEGATE WILLONER: It seems to me the issue
9 before the Convention is whether or not the right of
10 removal will continue to exist. The history of those
11 cases where the question was left to the discretion of
12 the Court have unanimously been reversed.

13 I think an example of how far the Court will go
14 on this question is the Sam Shepherd case which of course
15 is not a Maryland case and I couldn't conceive it as being
16 that bad in Maryland, where they were interviewing jurors
17 and witnesses and where the case was being tried in the
18 press and wherein the Court refused to remove the case.

19 It is the same as in the Ruby case. Maybe
20 there wasn't any place to remove it, but removal was
21 requested and the Court in Texas refused to remove it.

1 Unless this right will be left in this
2 Constitution, this right will end and that is the question
3 today to determine whether the right will continue.

4 This right as proposed in this amendment has
5 the protection that the Court of Appeals and the General
6 Assembly may regulate it. It could expand the right.

7 The Legislature and the Court have been prohibited
8 from passing any kind of regulation of this right. This
9 will end the problem and now it seems to me the question
10 before you is: Should this right continue and if it should
11 it is the decision of this Body because we decide if it
12 is not to be left within the Constitution, it is my
13 feeling that there will be no right of a removal.

14 May I say this applies only to civil cases
15 and goes to the question of jury trials and not to the
16 question of the removal or prejudice of judges.

17 THE CHAIRMAN: Any delegate desire to speak in
18 opposition to the amendment?

19 Delegate Macdonald.

20 DELEGATE MACDONALD: Mr. Chairman, I would like
21 to offer Amendment W as a substitute amendment.

1 THE CHAIRMAN: Delegate Macdonald, I think any
2 person desiring to speak in opposition may do so before you
3 offer your amendment.

4 Delegate Henderson, do you desire to speak in
5 opposition?

6 DELEGATE HENDERSON: Yes. I suggest that
7 Delegate Willoner is not correct unless this right is put
8 in the Constitution it could not be regulated by the Court
9 or the General Assembly.

10 We are dealing here with a mere matter of
11 practice and procedure and of course the man can have
12 a fair and impartial trial if he is able to prove that he
13 has a constitutional right to a removal, so we are not
14 leaving the matter in limbo. We are merely leaving it
15 where it belongs, its regulation by the Court of Appeals
16 or the General Assembly.

17 I suggest that there is another problem in
18 connection with this which hasn't yet been mentioned.
19 We have adopted a system under which we have one superior
20 court and one district court in the whole State and that
21 would require every judge -- we would have a unified

1 judicial system and to work it out in terms of the old
2 absolute right of removal from one jurisdiction to another
3 will no longer exist. It is a matter which will have to
4 be dealt with in a unified way on a statewide basis. It
5 seems to me that this perpetuates an absolute right of
6 removal. All that is required under the first paragraph
7 is simply an affidavit without any proof as to whether the
8 trial would be fair or impartial or not. It is an absolute
9 right of removal which is perpetuated and the last sentence
10 which attempts to provide reasonable regulation would not
11 permit any limitation upon that absolute right, so I hope
12 that this amendment will be defeated.

13 THE CHAIRMAN: Delegate Macdonald, you desire
14 to offer an amendment to Amendment 13?

15 DELEGATE MACDONALD: I do.

16 THE CHAIRMAN: "W"?

17 DELEGATE MACDONALD: "W".

18 THE CHAIRMAN: Will the pages please distribute
19 the Amendment W?

20 Delegate Burdette.

21 DELEGATE BURDETTE: Mr. Chairman, would the

1 Chair please clear up exactly what is on the floor?
2 Before the present Chair took his position, we had a
3 great deal of discussion about the Willomer amendment.
4 I cannot find it.

5 THE CHAIRMAN: The so-called Willomer amendment
6 is Amendment No. 13, the one with the letter H.

7 DELEGATE BURDETTE: Where is the Willomer
8 amendment?

9 THE CHAIRMAN: That is the so-called Willomer
10 amendment offered by Delegate Kiefer, Amendment 13. Do
11 you have a copy?

12 DELEGATE BURDETTE: I have one by Delegate
13 Kiefer marked H.

14 THE CHAIRMAN: That is Amendment 13 which is now
15 before you.

16 This will be marked 13A to Amendment 13. It is
17 offered as a substitute for Amendment 13.

18 Delegate Macdonald, your amendment is offered as
19 a substitute for Amendment 13?

20 DELEGATE MACDONALD: That is correct, Mr. Chairman.

21 THE CHAIRMAN: The Clerk will read the amendment.

1 MR. QUILLEN: Amendment No. 13A to Committee
2 Recommendation No. R&P-2 by Delegate Macdonald:

3 On page 3 Section 8 Right of Removal of Civil
4 Cases strike out all of lines 14 through 20, inclusive,
5 and insert in lieu thereof the following:

6 "In all actions at law or in equity, the action
7 shall be removed to another county upon request of a
8 party, except that in actions involving real property,
9 actions in the District Court, and all actions where the
10 request is made less than thirty days prior to trial, the
11 action may be removed only as permitted by the Court of
12 Appeals by rule."

13 THE CHAIRMAN: Amendment 13A is submitted by
14 Delegate Macdonald. Is there a second?

15 (Seconded)

16 THE CHAIRMAN: The amendment is seconded.

17 The Chair recognizes Delegate Macdonald to
18 speak to the amendment.

19 DELEGATE MACDONALD: Mr. Chairman and Fellow
20 Delegates: Let me address myself first to Amendment 13,
21 the Kiefer-Willoner amendment.

1 It does not include equity cases, as I read it,
2 there would be no right of removal whatsoever in an equity
3 case unless the Court of Appeals chose to grant one.

4 As I read it, it does not make an exception in
5 regard to actions involving land. I don't think we want
6 actions involving real property rights treated in the
7 same way.

8 For hundreds of years actions involving real
9 property rights have been involved in the county where the
10 land is located, and thirdly, and this is the thing that
11 gives me the most trouble with Amendment 13, it seems to
12 be inconsistent on its face.

13 In line 9, it says the Court shall -- if I read
14 just that it indicates a case must be removed whenever the
15 party would file an action under oath, but then the
16 amendment goes on and says that the Court of Appeals by
17 rule shall provide for regulation of this provision. It
18 seems the right under Amendment 13 would be unqualified or
19 you could end up when you would have no qualifying right.

20 We have an unqualified right of removal in the
21 Maryland Constitution since 1875 in certain cases, namely

1 civil cases and criminal cases where a capital offense
2 was involved. There is some language at the end of the
3 present constitutional provision. I am reading now from
4 the present Constitution which says, "In regard to this
5 unqualified right of removal and the General Assembly
6 shall make such modification of the existing law as may be
7 necessary to regulate and give force to this provision."

8 This language is so much simpler to the last
9 sentence in Amendment 13. In Barnes against Meliski, a
10 decision by the Maryland Court of Appeals, the Court held
11 that that language did not give the General Assembly the
12 authority to modify the unqualified right of removal.

13 In other words, ladies and gentlemen, the
14 language on lines 11, 12, and 13 of Amendment 13 may not
15 give the Court the right to modify the unqualified right
16 of removal which is contained in the first section, first
17 sentence.

18 Now, turning to Amendment 13A, this would give
19 unqualified right of removal in all actions at law or in
20 equity upon the request of a party except that actions
21 involving real property, removal in those cases would be

1 permitted only as permitted by the Court of Appeals by
2 rule.

3 Action s in the District Court, actions in those
4 cases would be permitted only as permitted by the Court of
5 Appeals by rule and actions where the request is made less
6 than thirty days prior to trial, they would be permitted
7 only as permitted by the Court of Appeals by rule.

8 Now, this provision strikes at the heart of
9 the abuses to which the right of removal has been subjected
10 in the past. I took the liberty of contacting Judge J.
11 Dudley Diggs who is Chief Judge of the Seventh Judicial
12 Circuit and asked him for a letter on this subject and he
13 was kind enough to reply and I distributed that letter
14 among you and you will see from that letter that in the
15 many, many cases in which this right of removal is exer-
16 cised in ninety-five and ninety-eight per cent of the
17 cases it is abused, it is done at the last minute.

18 My amendment would prevent that abuse. If the
19 request to remove was made within thirty days prior to
20 trial, it could be done only as permitted by the Court
21 of Appeals by rule. I would assume the Court of Appeals

1 would pass reasonable regulations and allowing right of
2 removal in that case only for good cause shown.

3 THE CHAIRMAN: Delegate Willoner, do you accept
4 the substitution or do you wish to speak against it?

5 DELEGATE WILLONER: Mr. Chairman, this is the
6 position of the majority of the Members of our Committee
7 and it is not to change the present practice in that the
8 present practice goes toward the local prejudice in the
9 jury, not in the Judge.

10 While I have great sympathy for Delegate
11 Macdonald's amendment, I feel in speaking for the majority
12 that the intent of this is to preserve the present practice
13 except where it is abused and to permit regulation of it
14 by assigning costs in those cases where costs are incurred
15 because of removal or secondly where the Court could make
16 an election like in a jury trial requiring an election a
17 reasonable time before trial.

18 I don't know what Judge Henderson was getting
19 at when he said there were other things that the Court
20 couldn't do. The purpose of this, this is a middle ground,
21 it preserves the right of removal but leaves it subject to

1 regulation as it is proposed in Judge Digg's letter. If
2 it is going to be in, it ought to be in so it is regulated
3 by the Court or General Assembly. I probably will not
4 vote on this substitution.

5 THE CHAIRMAN: The question arises on the
6 substitution of Amendment 13A for Amendment 13. Does
7 anyone desire to speak further on the motion?

8 Are you ready for the question?

9 The Clerk will ring the quorum bell.

10 For what purpose does Delegate Penniman rise?

11 DELEGATE PENNIMAN: I would like to ask a clar-
12 ifying question as to one meaning in case this should pass.

13 THE CHAIRMAN: State the question.

14 DELEGATE PENNIMAN: I would like to know if
15 line 12 means prior to the date set for the trial, or
16 something else.

17 THE CHAIRMAN: Delegate Macdonald, can you
18 respond to the inquiry?

19 DELEGATE MACDONALD: That is the intent, Mr.
20 Chairman.

21 THE CHAIRMAN: Very well.

1 I take it, Delegate Macdonald, your answer in
2 view of the way the question was phrased leaves the Chair
3 in a little doubt. The question was asked whether it
4 meant prior to the date set for trial and you said yes.
5 I wonder if you mean that or prior to the time the trial
6 actually begins. I am thinking of a situation where a
7 case may be on preliminary assignment set for trial on
8 January fifth and not been reached. If you have not
9 moved before that date, is it your intention that you
10 couldn't postpone it even though it may not be reached
11 until January tenth?

12 DELEGATE MACDONALD: My intention, Mr. Chairman,
13 is that it is the date set for trial, but I don't think
14 that is a matter of great moment. I think the Court of
15 Appeals would be able --

16 THE CHAIRMAN: Your answer was to be as
17 intended, meaning at a date prior to trial.

18 DELEGATE MACDONALD: That would be up to the
19 Court of Appeals to set out the rule.

20 DELEGATE BAMBERGER: I would like to ask
21 Delegate Macdonald if he would yield to a question.

1 THE CHAIRMAN: Delegate Macdonald?

2 DELEGATE MACDONALD: I yield.

3 DELEGATE BAMBERGER: Is it the intent of this
4 amendment that in an instance where a litigant thought
5 that a particular judge or a particular jury panel would
6 not give him an impartial trial that the case could not
7 be transferred to another court in that county, but it
8 must in every instance be removed to another county?

9 DELEGATE MACDONALD: It would depend on when he
10 filed his motion for removal. If a party filed his motion
11 for removal more than thirty days prior to the time his
12 case was set for trial, he would have an unqualified right
13 but within the last thirty days before the time set by
14 trial he could get it only as it is permitted by the Court.

15 THE CHAIRMAN: Are you ready for the question?
16 The question arises on the Amendment 13A as a substitute
17 for Amendment 13. If the motion is carried, Amendment 13A
18 is carried for Amendment 13 and you will then vote on the
19 substitute. If the motion is lost, the question will be
20 before you on Amendment 13 open to further amendment.

21 The question arises on the adoption of Amendment

1 13A. A vote Aye is a vote in favor of the amendment, that
2 is ^a/vote in favor of the substitution. This is not a final
3 vote on the amendment. A vote no is a vote against the
4 amendment, that is a vote against the substitution.

5 Cast your vote.

6 Has every delegate voted? Does any delegate
7 desire to change his vote?

8 The Clerk will record the vote. There being
9 fifty-one votes in the affirmative and sixty-three in the
10 negative, the motion is lost and the amendment to the amend-
11 ment is rejected.

12 The question now rises on Amendment 13.

13 Delegate Moser, do you desire to offer your
14 amendment as a substitute?

15 DELEGATE MOSER: Mr. Chairman, I suppose I
16 better.

17 THE CHAIRMAN: Just advise the Chair yes or no.

18 DELEGATE MOSER: Yes.

19 THE CHAIRMAN: Pages will please distribute
20 Amendment X.

21 This will be Amendment 13B as a substitute for

1 Amendment 13.

2 The Clerk will read the amendment.

3 MR. QUILLEN: Amendment No. 13B to Committee
4 Recommendation No. R&P-2 by Delegate Moser:

5 On page 3 strike out all of Section 8 Right
6 of Removal of Civil Cases comprising lines 11 through 20,
7 inclusive; and insert in lieu thereof the following:

8 "Section 8. Right of Removal of Cases

9 The Court of Appeals by rule or the General
10 Assembly by law shall provide for the right of removal of
11 cases in the trial courts."

12 THE CHAIRMAN: The amendment to the amendment
13 submitted by Delegate Moser, is there a second?

14 (seconded)

15 THE CHAIRMAN: The amendment having been seconded,
16 the Chair recognizes Delegate Moser.

17 DELEGATE MOSER: Mr. Chairman, in order to make
18 this an appropriate substitution, I should make an amend-
19 ment to this and ask for unanimous consent for that purpose.

20 THE CHAIRMAN: State the modification.

21 DELEGATE MOSER: I would like to explain it.

1 This was a substitute for both Sections 8 and 12 and would
2 have applied in both criminal and civil cases, but I don't
3 think it is appropriate at this time to have it so apply
4 and therefore in line 10 of the amendment, the last word,
5 "courts", I would strike and insert in lieu thereof the
6 words "of civil cases".

7 That won't do it.

8 THE CHAIRMAN: Can't you accomplish it simply
9 by adding the word "civil" before the word "cases" in
10 line 10?

11 DELEGATE MOSER: Yes.

12 THE CHAIRMAN: Is there any objection to the
13 modification by adding the word "civil" before the word
14 "cases" in line 10?

15 DELEGATE JAMES: No objection.

16 THE CHAIRMAN: No objection. The amendment is
17 so modified.

18 Delegate Moser.

19 DELEGATE MOSER: In brief explanation of it, I
20 would say that the effect is to mandate that there be a
21 right of removal. I think that will allay the fears of

1 some Members of the Convention and this is the purpose of
2 it. It would require action by either the Court of Appeals
3 or the General Assembly by law. It leaves it in the hands
4 of either.

5 I am frank to say that I prefer matters as they
6 are because I think that this is a question that should be
7 handled by the Rules Committee.

8 However, I advocate this amendment to Delegates
9 Kiefer and Willoner's amendment, and therefore I am
10 submitting it so that it can be voted up or down.

11 THE CHAIRMAN: The Chair recognizes Delegate
12 Willoner. You indicate whether you accept the substitute
13 or desire to oppose it?

14 DELEGATE WILLONER: I am in the reverse position
15 of Delegate Moser. This would be a second line position
16 and this is my second line. The only problem is that he
17 has a better shot at it than I do. It is very difficult
18 to argue against it in the sense that at least we would
19 have a provision in the Constitution requiring the General
20 Assembly or the Court of Appeals to do something about
21 this.

1 Again, I have a problem as a lawyer to say how
2 they could do it and in many of the sections where we have
3 said shall do something and without setting out any
4 standards it makes it pretty impossible of enforcement.

5 I would have to say I would have to vote against
6 it because again the Committee position is that this is a
7 very important right that has been with us since 1805. We
8 do not wish to change that right except to give the Court
9 of Appeals reasonable regulation of it. That is all I can
10 say about it and I would have to oppose it.

11 THE CHAIRMAN: Delegate James.

12 DELEGATE JAMES: What we are doing is we are
13 really broadening the Willomer amendment. It seems to me
14 this says shall provide for the right of removal. That
15 means in all cases equity, condemnation, ejectment of
16 land cases -- I can't really see any limitation.

17 The Court, as I interpret this, is limited to
18 procedural matters. There may be some flexibility, but
19 it is much broader than the Willomer amendment.

20 THE CHAIRMAN: Delegate Moser.

21 DELEGATE MOSER: Simplicity is sometimes not

1 always best. This is both simple and clear. It doesn't
2 say all cases, it doesn't mean all cases. It simply says
3 that there shall be provided some right of removal. It
4 leaves and it intends to leave with the Rules Committee
5 or the General Assembly if the Rules Committee doesn't
6 move, the absolute right to determine how this study be
7 handled and that is the purpose of it.

8 THE CHAIRMAN: The Chair suggests to you that
9 Delegate James is suggesting you change the word "shall"
10 in line 9 to "may".

11 Would you consider the change?

12 DELEGATE MOSER: I couldn't accept the amendment
13 at this point.

14 THE CHAIRMAN: Very well.

15 Any delegate desire to speak in opposition to
16 the amendment?

17 Delegate Schneider.

18 DELEGATE SCHNEIDER: I would like to ask
19 Delegate Moser a question.

20 THE CHAIRMAN: Delegate Moser, do you yield to
21 a question?

1 DELEGATE MOSER: Yes.

2 DELEGATE SCHNEIDER: I understand what you mean
3 when the Court of Appeals or General Assembly shall -- but
4 I don't know what it means when it says "may". You are
5 saying either one or the other should do something. I am
6 kind of at a loss to understand how we can tell them that
7 they shall if we don't tell one or the other to do it.

8 DELEGATE MOSER: The constitutional mandate
9 would be satisfied if either one does.

10 THE CHAIRMAN: Delegate Schneider.

11 DELEGATE SCHNEIDER: I don't think that is an
12 answer to my question. If you are going to go in and enforce
13 this and you go to the Court and say it is constitutionally
14 mandated that the right of removal shall be provided and
15 the Court says -- who is the Court going to order to do it?
16 The General Assembly or the Court of Appeals, or can it
17 order either one, or can you order either one?

18 THE CHAIRMAN: Is that a question?

19 DELEGATE SCHNEIDER: I tried to make it a
20 question.

21 THE CHAIRMAN: Delegate Moser?

1 DELEGATE MOSER: No one can order anyone to do
2 this. It is simply a mandate. That is to say that there
3 is no legal way to do it. It is a mandate to them which
4 presumably would not be ignored, but I don't believe that
5 except if there were a violation of due process that this
6 could be enforced. We have had this question up many,
7 many times and it envisions more than a ministerial act
8 and therefore it would not be enforceable in that respect.

9 THE CHAIRMAN: Any other delegate desire to speak
10 in opposition? Delegate Sherbow.

11 DELEGATE SHERBOW: Will Delegate Moser yield
12 to a question?

13 THE CHAIRMAN: Delegate Moser, do you yield
14 to another question?

15 DELEGATE MOSER: With hesitation.

16 THE CHAIRMAN: Delegate Sherbow.

17 DELEGATE SHERBOW: In the event this amendment
18 is voted down and the Scanlan amendment remains and this
19 section is taken down, would not the Court of Appeals and
20 would not in the alternative the General Assembly have this
21 right anyway?

1 THE CHAIRMAN: Delegate Moser?

2 DELEGATE MOSER: Absolutely right. This is a
3 substitute. They would have this right, but it does give
4 recognition. It accomplishes somewhat more for those who
5 want to accomplish somewhat more than entirely omitting it
6 in the sense that it is a mandate to the Court or to
7 the General Assembly.

8 THE CHAIRMAN: Are you ready for the question?

9 (Cries of question.)

10 THE CHAIRMAN: The Clerk will ring the quorum
11 bell.

12 Delegate Johnson.

13 DELEGATE JOHNSON: Mr. Chairman and ladies and
14 gentlemen, just very briefly as Delegate Willoner said this
15 is certainly my second line position and I will support this
16 amendment. We have a right of removal in our present
17 Constitution and I believe we should have a right of
18 removal in our new Constitution.

19 Delegate Sherbow has indicated that the Court
20 of Appeals and the General Assembly shall have the power.
21 However, the citizens, the people of this State, will not

1 have the right of removal unless the General Assembly with
2 the Court of Appeals by rule acts. If we adopt this
3 amendment we are giving to the citizens of this State
4 subject to controls and regulation by the General Assembly
5 and the Court of Appeals by rule, so I say let us give the
6 citizens of this State this right of removal and adopt this
7 amendment.

8 THE CHAIRMAN: Are you ready for the question?

9 (Cries of question.)

10 THE CHAIRMAN: The question arises on the adopt-
11 ion of Amendment 13B as a substitute for Amendment 13.
12 The question is only a vote on the substitution.

13 A vote Aye is a vote in favor of the substitution;
14 a vote No is a vote against the substitution. In either
15 event you will have the principal question submitted to you.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote. There being
20 seventy-three votes in the affirmative and forty in the
21 negative, Amendment 13B is adopted as a substitute for

1 Amendment 13.

2 So that the record may be clear, before we
3 leave Amendment 13 which has not been disposed of, will
4 you please mark your copies so that the preliminary language
5 is corrected to read as follows: This is the substitution
6 in the first four lines: On page 3 restore lines 11 and
7 12 and in line 14 insert the following: --

8 For what purpose does Delegate Harry Taylor
9 rise?

10 DELEGATE HARRY TAYLOR: A point of personal
11 privilege.

12 THE CHAIRMAN: State the privilege.

13 DELEGATE HARRY TAYLOR: In the balcony to the
14 right of the Chair sits a former law associate of mine who
15 is now an attorney in the Trust Department of Riggs Bank.
16 Her name is not Baby Jane, it is Miss Linda Watkins, and
17 I hope the Convention will give her its usual warm welcome.
18 (Applause)

19 THE CHAIRMAN: The question now arises on the
20 adoption of Amendment 13B as a substitute for Amendment 13,
21 that is on the adoption of the amendment.

1 Are you ready for the question?

2 Delegate James.

3 DELEGATE JAMES: Mr. Chairman, I would like a
4 point of clarification here. Now, this language as I under-
5 stand it provides for the right of removal of civil cases
6 in trial courts and the use of the word "shall".

7 Now, as I interpret this, it means that it is
8 a constitutional command to either the General Assembly
9 or the Court of Appeals to provide a right of removal in
10 all cases.

11 Now, is there is a limitation to this interpre-
12 tation, I think this should be clear. This says removal of
13 civil cases.

14 Now, as I interpret that, that doesn't mean
15 the right to pick and choose those civil cases, but it
16 means the right to remove all cases and the Court of
17 Appeals power is merely limited to the details of how this
18 shall be exercised in all cases.

19 THE CHAIRMAN: I take it that that is what the
20 language means.

21 Delegate Moser, do you differ from that?

1 DELEGATE MOSER: I didn't follow the entire
2 colloquy.

3 THE CHAIRMAN: Delegate James is suggesting
4 or inquiring whether the effect of this provision is to
5 require either the Court of Appeals or the General Assembly
6 to provide for removal in all civil cases, not merely
7 those where there is a right of removal now, but in all civil
8 cases, cases in equity, for instance.

9 DELEGATE MOSER: I answered his previous
10 inquiry. All civil cases, no, but all types of action,
11 yes, if that is what he means. It is intended to include
12 equity cases and all other types of action.

13 THE CHAIRMAN: His question is or his suggestion
14 is that the language does not permit either the General
15 Assembly or the Court of Appeals in acting under this
16 section to say that there shall not be a right of removal
17 in any particular kind of civil case.

18 Do you concur?

19 DELEGATE MOSER: I am sorry, no, I don't mean
20 that.

21 THE CHAIRMAN: The Chair suggests, then, that

1 there should be some clarifying language because the
2 language would appear to indicate that.

3 Delegate Moser.

4 DELEGATE MOSER: Then I would suggest that we
5 have a luncheon recess and I will get together with
6 Delegates James and Henderson on this if the Chair would
7 want this because this is something which should then be
8 carefully drafted.

9 THE CHAIRMAN: I had hoped to dispose of the
10 matter before lunch, but I think it is more important
11 that we get the language correct. I would hope that if
12 we recess for lunch now that when we come back that we do
13 not renew the entire debate that has taken place in the last
14 hour or hour and a half.

15 For what purpose does Delegate Henderson rise?

16 DELEGATE HENDERSON: I want to state my
17 interpretation of this language which may be contrary to
18 what the Chair expressed if I am in order in doing so.
19 It seems to me this would give to the Court or the Legisla-
20 ture the right, for example, to continue the present
21 practice of not allowing the removal in condemnation cases,

1 for example, where it is necessary for the jury to have
2 a view of the property. That is a whole class of cases
3 which has never been subject to removal and it never has
4 been.

5 I don't think the adoption of that amendment
6 would change that rule or law. I take it that the rules
7 could include conditions. It might say that it required
8 good cause shown or the possibility of prejudice before it
9 might allow removal. All such things as that.

10 It was my intention in voting for this, my
11 thought, that the General Assembly or the Court of Appeals
12 would have full power to make classifications and while
13 the right was mandated, it was not any particular right,
14 but a right subject to such condition as to time or other-
15 wise that might be imposed by rule.

16 THE CHAIRMAN: The Chair concurs, Delegate
17 Henderson, that the interpretation you suggest is positive.
18 My concern is that it is not as clear as it might be.
19 I think it might be worthwhile to take the recess to see
20 if the language can be clarified.

21 For what purpose does Delegate Moser rise?

1 DELEGATE MOSER: I would adopt Judge Henderson's
2 interpretation entirely and if you would care to leave
3 the wording to style and drafting --

4 THE CHAIRMAN: I don't think the matter is one
5 that can be left to the Committee on style. I think it
6 goes to substance. I think we are wasting time now if
7 you will permit the Chair to say so.

8 For what reason does Delegate Cardin rise?

9 DELEGATE CARDIN: It was a parliamentary
10 inquiry.

11 THE CHAIRMAN: State the inquiry.

12 DELEGATE CARDIN: I want to inquire if after
13 the language is drafted we will vote on the acceptance of
14 this as an inclusion in the Constitution as opposed to the
15 omission.

16 THE CHAIRMAN: That is correct.

17 DELEGATE CARDIN: Thank you.

18 THE CHAIRMAN: The Chair is going to recognize
19 Delegate Powers to move that the Committee rise, but
20 earnestly suggests that Delegate Moser, Delegate Willoner,
21 and Delegate James spend a few minutes at lunch and see if

1 they can remove any positive doubt about this.

2 Delegate Powers.

3 DELEGATE POWERS: Mr. Chairman, I move that
4 the Committee of the Whole rise and report that it has
5 not yet completed consideration of R&P-2.

6 (Seconded)

7 THE CHAIRMAN: All in favor, signify by saying
8 Aye; contrary, No.

9 The Ayes have it, and it is so ordered.

10 (The mace was removed by the Sergeant at Arms.)

11 (Whereupon, at 1:25 p.m., the Committee of the
12 Whole rose, and the Convention reconvened.)

13 THE PRESIDENT: On behalf of the Committee of
14 the Whole, the Chair reports the Committee has had under
15 consideration R&P-2, that it still has it under considera-
16 tion, and that it desires leave to sit again.

17 Are there any announcements necessary to be
18 made by Committee Chairmen?

19 Delegate Mudd.

20 DELEGATE MUDD: May I announce that there will
21 be a very important meeting of the Committee on the

1 Judicial Branch at 1:45, and will all Members please attend.

2 DELEGATE GALLAGHER: The Committee on the
3 Legislative Branch will meet for lunch immediately after
4 we recess.

5 I also wish to announce that we will not have
6 the photograph made immediately after this session as I
7 have said this morning. Other arrangements have been made,
8 so there is no photograph, but there is an immediate
9 luncheon meeting.

10 THE PRESIDENT: Any other announcements by
11 Committee Chairmen?

12 Any announcements by Delegates?

13 The tally sheet which is the roll call sheet
14 distributed as Amendment 7 was in error. Mark it
15 Amendment 7 to Committee Recommendation R&P-2.

16 Let me remind you unless you have forgotten
17 that there will be an evening session tonight. All delegates
18 not present at roll call may indicate their presence at the
19 supplemental roll call. The Clerk will report the
20 supplemental roll call.

21 The Chair recognizes Delegate Powers.

1 DELEGATE POWERS: Mr. Chairman, I move that we
2 recess until 2:30.

3 THE PRESIDENT: Please note, one hour, 2:30.

4 (Seconded)

5 THE PRESIDENT: All in favor, signify by saying
6 Aye; contrary, No.

7 The Ayes have it, and so ordered.

8 (Whereupon, at 1:30 o'clock p.m., the Convention
9 recessed for lunch to reconvene at 2:30 o'clock p.m., of
10 the same day.)

1 AFTERNOON SESSION

2 December 14, 1967 - 2:30 p.m.

3 THE PRESIDENT: The Sergeant at Arms will clear
4 the aisles and close the doors.

5 The convention will please come to order.

6 Roll call.

7 (Whereupon, the roll was called.)

8 THE PRESIDENT: Has every delegate answered
9 the roll call?

10 The Clerk will record the roll call.

11 I am handing to the Journal Clerk a memorandum,
12 today's date, indicating absences of delegates excused
13 for the pay period beginning November 29, 1967, ending
14 December 12, 1967.15 All absences other than those indicated on the
16 memorandum have not be excused. The memorandum may be
17 examined by anyone at any time.

18 Are there any motions or resolutions?

19 The Chair hears none.

20 The Chair recognizes Delegate Powers.

21 DELEGATE POWERS: Mr. President, I move the

1 adoption of Debate Schedule No. 12, which governs the
2 Committee recommendations numbering P5 through 11, which
3 will be taken up next after we conclude the present Committee
4 recommendations before the Committee of the Whole.

5 Is there a second?

6 (Seconded)

7 THE PRESIDENT: Any discussion?

8 All in favor, signify by saying Aye; contrary,
9 No.

10 The Ayes have it.

11 It is so ordered. Debate Schedule No. 12 is
12 adopted.

13 The Chair recognizes Delegate Powers.

14 DELEGATE POWERS: Mr. President, I move the
15 Convention resolve itself into the Committee of the Whole
16 so that we may consider general orders of the day.

17 THE PRESIDENT: Second?

18 (Seconded)

19 THE PRESIDENT: All in favor, signify by saying
20 Aye; contrary, No.

21 The Ayes have it. It is so ordered.

1 (The mace was removed by the Sergeant at Arms.)

2 (Whereupon, at 2:37 p.m., the Convention
3 resolved itself into the Committee of the Whole.)

4 THE CHAIRMAN: The Committee of the Whole will
5 please come to order.

6 We have under consideration Committee Recommenda-
7 tion R&P-2, Section 8, amendment 13B, which has been
8 substituted for amendment 13.

9 Delegate Moser, the Chair understands you have
10 an alternate substitute or modification for amendment 13B.

11 DELEGATE MOSER: Yes, sir. It is labeled,
12 amendment No. 13, a substitute for amendment No. 13.

13 THE CHAIRMAN: Will the pages please distribute
14 the substitute?

15 Delegate Moser, I think probably, so that there
16 will be no misunderstanding, the amendment now being
17 distributed should be numbered 13C. Please mark your copy
18 amendment 13C.

19 The Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 13C as substitute
21 for Amendment No. 13 to Committee Recommendation No. R&P-2

1 by Delegate Moser:

2 On page 3, insert the following, beginning in
3 line 11:

4 "Section 8. Right of Removal of Civil Cases.

5 In the trial of civil cases, there shall be a
6 right of removal to the extent and under such terms and
7 conditions as shall be prescribed by the Court of Appeals
8 by rule or the General Assembly by law.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Macdonald on a matter of personal privilege.

11 DELEGATE MACDONALD: Mr. Chairman and Fellow
12 Delegates, in the rear balcony behind the rostrum are 125
13 students from Stone Ridge School in Montgomery County
14 with their teacher, Mrs. McCarthy, and their sponsor and
15 friend, Mrs. Mattingly. Please join me in giving them a
16 nice welcome. (Applause)

17 THE CHAIRMAN: Delegate White, do you desire to
18 be recognized on a matter of personal privilege?

19 DELEGATE WHITE: Not at this time.

20 THE CHAIRMAN: I am afraid your guest came in
21 and went out.

1 DELEGATE WHITE: Mr. Chairman and Members of
2 the Convention, we did have with us earlier a group of
3 thirty-five students from Baltimore City School 160. They
4 are coming in to the rear of the podium. There are
5 thirty-five students from Baltimore City School 160 and
6 they are accompanied by their teachers, Mrs. Tensley
7 and Miss Hamer. Let us make them welcome.

8 (Applause)

9 THE CHAIRMAN: The Clerk will read Amendment
10 13-C.

11 MR. QUILLEN: Amendment No. 13-C as a
12 substitute for Amendment No. 13 to Committee Recommendation
13 No. R&P-2 by Delegate Moser:

14 On Page 3, insert the following, beginning
15 in Line 11: "Section 8. Right of Removal of Civil
16 Cases.

17 In the trial of civil cases, there shall be
18 a right of removal to the extent and under such terms
19 and conditions as shall be prescribed by the Court of
20 Appeals by rule or the General Assembly by law.

21 THE CHAIRMAN: Delegate Moser, the Chair

1 understands you desire to substitute this for Amendment
2 No. 13-B which has now been substituted for Amendment
3 No. 13, and is, therefore, Amendment 13 as amended.

4 DELEGATE MOSER: That is correct, sir. I
5 would move the substitution of this. It is not a change
6 that I can accept, I think, under the circumstances.

7 THE CHAIRMAN: Very well. Is there a second?

8 DELEGATE BENNETT: Second.

9 THE CHAIRMAN: Delegate Bennett seconds the
10 motion.

11 The question now arises on the substitution.
12 Delegate Storm.

13 DELEGATE STORM: A point of inquiry.

14 THE CHAIRMAN: State the inquiry.

15 DELEGATE STORM: How do we stand in reference
16 to 13 which was the Kiefer - Willoner amendment?

17 THE CHAIRMAN: 13 is gone. 13-B has been
18 substituted for it and is before you. Delegate Moser
19 is now offering 13-C as a substitute for 13-B.

20 Delegate Storm.

21 DELEGATE STORM: Mr. Chairman, 13 being gone

1 but not by me forgotten, could I substitute that for
2 this substitution?

3 THE CHAIRMAN: No, sir.

4 DELEGATE STORM: Thank you.

5 THE CHAIRMAN: The question arises on Amendment
6 No. 13-C as proposed by Delegate Moser, seconded by
7 Delegate Bennett. The Chair recognizes Delegate Moser
8 to speak to it.

9 DELEGATE MOSER: Mr. Chairman, ladies and
10 gentlemen, I will be very brief. This shows presumably
11 more clearly what the original amendment to the amend-
12 ment did, or was intended to do. It makes clear that the
13 extent of the right of removal and the type cases that
14 would be involved is up to either the Court of Appeals
15 by rule of the General Assembly by law which is what I
16 stated on the floor the first provision was intended
17 to accomplish and I would, therefore, favor adoption of
18 13-C.

19 THE CHAIRMAN: Delegate Willoner.

20 DELEGATE WILLONER: Mr. Chairman, it is my
21 understanding that this provision is to provide by rule or

1 statute the procedure that we have now, subject to
2 regulation by the Court of Appeals or the General Assembly
3 by law and if that is the case, I would accept the
4 substitute and vote for it.

5 THE CHAIRMAN: Delegate Scanlan, for what
6 purpose do you rise?

7 DELEGATE SCANLAN: I rise to oppose the
8 amendment.

9 THE CHAIRMAN: You may speak.

10 DELEGATE SCANLAN: Reluctantly the sponsors
11 of the original Scanlan amendment have parted their ways
12 and we now have the Moser Amendment which, if it prevails,
13 will fill the void that I had removed in the amendment
14 that passed this house over three and a half hours ago.

15 I thought by offering that amendment to
16 strike we could cut down some of the debate, but debate
17 was repeated and we now have an amendment that does
18 precisely what the Court of Appeals and the legislature
19 could do if nothing were in the Constitution. It
20 gives some solace to people to put something in the
21 Constitution --

1 THE CHAIRMAN: The question is not now arising
2 on the adoption of this amendment, but merely on the
3 substitution of Amendment 13-C for 13-B. If it is
4 substituted, the Chair will then submit the question of
5 whether it should be adopted.

6 DELEGATE SCANLAN: There are so many substi-
7 tutions, I thought some of the Delegates would have
8 lost track of the actual parliamentary situation. I
9 know I have.

10 THE CHAIRMAN: Delegate Johnson.

11 DELEGATE JOHNSON: Mr. Chairman and ladies and
12 gentlemen, I rise to oppose the substitute amendment to
13 the amendment, and I think that Delegate Scanlan has put
14 his finger on just exactly what problems we will face
15 if we adopt Delegate Moser's amendment to his own
16 amendment, which we just adopted.

17 You will recall that the Delegates', Kiefer
18 and Willoner, amendment was a rather broad and general
19 right of removal. Delegate Moser's amendment, 13-B,
20 curtails that right somewhat and was a compromise, and
21 then was adopted by this body, and I think rightfully so.

1 Now, the Amendment 13-B further curtails the
2 right of removal so that it could create in effect
3 absolutely no right of removal at all. When I say that I
4 mean absolutely no right of removal for all practical
5 purposes so it naturally follows that if we adopt 13-B,
6 Delegate Scanlan is going to have one heck of an argument
7 to get up and say, I move that we eliminate 13-B because
8 that is exactly what the legislature and the courts could
9 do if we didn't have it in the first place, and because
10 I am right and because this body has said that we shall
11 have a right of removal in our Constitution, and because
12 Delegate Henderson has said. I submit that this does
13 not curtail the right of the legislature and the right of
14 the Court to regulate this right of removal.

15 I urge that we defeat 13-B, the substitute
16 amendment that is before us, and then adopt favorably
17 the motion -- that we defeat this substitute amendment
18 that is before us and then adopt by affirmative action the
19 amendment we have previously approved before the luncheon
20 break.

21 THE CHAIRMAN: Any further discussion on the

1 question before you which is the adoption of Amendment
2 No. 13-C as a substitute for Amendment 13 or 13-B.

3 Are you ready for the question?

4 The Clerk will ring the quorum bell.

5 The question arises on the adoption of
6 Amendment No. 13-C as a substitute for Amendment No. 13
7 as amended by Amendment No. 13-B. This is not a vote
8 on the adoption of Amendment 13-C, only on the question
9 of substitution. After that, the principal question will
10 be submitted to you. A vote now is a vote on the adoption
11 of Amendment No. 13-C as a substitute for 13-B. A vote
12 Aye is a vote in favor of the amendment. That is a vote
13 in favor of the substitution. A vote No is a vote
14 against the substitution.

15 Cast your votes.

16 Have all Delegates voted?

17 Does any Delegate desire to change his vote?

18 The Clerk will record the vote.

19 There being seventy-seven votes in the affirmative
20 and fifteen in the negative, Amendment No. 13-C is now
21 substituted for Amendment No. 13 as amended by Amendment

1 No. 13-B.

2 The question now arises on the adoption of
3 Amendment No. 13 as amended by Amendment No. 13-C. Are
4 you ready for the question?

5 The vote now is on the adoption of the language
6 as in new Section 8, which appears in Amendment No. 13-C.
7 A vote Aye is a vote in favor of the amendment. A vote
8 No is a vote against.

9 Cast your votes.

10 Has every Delegate voted?

11 Does any Delegate desire to change his vote?

12 The Clerk will record the vote.

13 There being forty-four votes in the affirmative
14 and eighty in the negative, Amendment No. 13 as amended
15 is rejected.

16 DELEGATE KIEFER: Mr. President.

17 THE CHAIRMAN: Delegate Kiefer.

18 DELEGATE KIEFER: May I suggest that as a
19 matter of convenience and while we are on the subject
20 that we dispose of Section 12, which has to do with
21 removal in criminal cases?

1 THE CHAIRMAN: Is there any objection to taking
2 up next Section 12?

3 Delegate Willoner.

4 DELEGATE WILLONER: Mr. Chairman, the Committee
5 amendment for Section 12 had a minor change in it and has
6 not been printed yet. At least, I haven't seen a copy
7 of it. I just gave it to them about ten minutes ago.

8 THE CHAIRMAN: We will have to wait until we
9 get to it.

10 For what purpose does Delegate Weidemeyer
11 arise?

12 DELEGATE WEIDEMEYER: I do object to passing
13 on to Section 12.

14 THE CHAIRMAN: We are not passing on to it
15 now anyhow. There is no necessity to state your objection.
16 We are not considering Section 12 at this time.

17 DELEGATE WEIDEMEYER: I have an amendment to
18 offer. It offers a new section to take the place if
19 Section 7 is deleted.

20 DELEGATE CLARK: Eight.

21 DELEGATE WEIDEMEYER: It is "AM".

1 THE CHAIRMAN: We will have to come back to
2 that, Delegate Weidemeyer.

3 The next section for consideration is Section
4 9.

5 There are two amendments. Apparently one is to
6 delete the entire section and the other is to change the
7 language of the section.

8 Delegate Kiefer, do you have any preference
9 as to the order in which the amendment should be offered?

10 DELEGATE KIEFER: Yes, sir, Mr. Chairman.
11 I think that the amendment marked "E" should be considered
12 first. This is a rewrite of this language. The language
13 has been approved by the Committee, and it is the language
14 to which Delegate Mitchell will speak because we have not
15 had a report on this particular section.

16 THE CHAIRMAN: The Chair is not clear. Are
17 you saying that the Amendment E is to be substituted
18 by the Committee in place of Section 9 in the Committee
19 Recommendation?

20 DELEGATE KIEFER: That is correct, sir.

21 THE CHAIRMAN: We should be able to dispose

1 of that rather quickly, I should think. Who is going
2 to move the amendment?

3 DELEGATE KIEFER: I move the amendment, but
4 Delegate Mitchell will speak to it.

5 THE CHAIRMAN: Delegate Mitchell.

6 DELEGATE MITCHELL: Mr. President, in order to
7 save time when the second section of R&P was presented,
8 it was decided that, as each section was presented, instead
9 of the Chairman of our Committee presenting the rationale
10 of the section, all of the sections at the beginning of
11 Section 2 as was done in Section 1, that we would present
12 it according to the sections so there would be no discussion
13 of what took place.

14 THE CHAIRMAN: Very well, the Chair will
15 recognize you, Delegate Mitchell, to make a presentation
16 on behalf of the Committee, with respect to Section 9.
17 Do you desire to come forward to the reading desk?

18 DELEGATE MITCHELL: No, sir.

19 THE CHAIRMAN: Very well. You may proceed.

20 DELEGATE MITCHELL: Mr. Chairman and fellow
21 Delegates, we have had extensive hearings and a number

1 of witnesses. There were a number of proposals sent to
2 our Committee with regard to the concept employed in this
3 language. A sub-committee worked on language. It was
4 revised a number of times and then we brought back the
5 language that is presented in the formal R&P-2
6 presentation.

7 Subsequently, in discussion with other Delegates
8 who were not quite clear as to the language of Section
9 9, the Committee has revised that and I would like to have
10 Mr. Kiefer read the revised language and have that
11 language on the desks of the Delegates as we discuss the
12 basis for this recommendation.

13 THE CHAIRMAN: I am sorry, Delegate Mitchell,
14 would you repeat that, please?

15 DELEGATE MITCHELL: I would like to request
16 that the new language which has been accepted by the
17 Committee and which is the proposal to be substituted
18 instead of Section 9, the language that presently
19 appears in Section --

20 THE CHAIRMAN: You want it to be distributed?

21 DELEGATE MITCHELL: Be distributed so it can

1 be on the desks.

2 THE CHAIRMAN: Pages, please distribute
3 Amendment E.

4 You may proceed, Delegate Mitchell.

5 DELEGATE MITCHELL: Mr. President, fellow
6 Delegates, the war in Viet Nam and the troubles in
7 Greece and the skirmishes in other sections of the world
8 are not the only wars that confront us as we sit here
9 in this Convention. There is another war and a continuing
10 battle, but it is between man and the machines. The
11 first industrial revolution was brought in by steam by
12 the discovery of steam and electricity, but we are now
13 in a second industrial revolution brought on by electronics
14 and atomics.

15 Now, in the first industrial revolution at
16 least men were needed to man the machines in the factories
17 and thousands of men poured from the farms into the
18 cities to man the machines in the factories, to improve
19 the standard of living, increase the volume of the output
20 of goods necessary to raise our living standards, but
21 we have a peculiar revolution, industrial revolution,

1 now facing us, and in which we are now involved. This
2 second industrial revolution is a revolution in which
3 the machines are replacing men, and it is of great
4 concern to our national economy and to the economies in
5 our State.

6 The warning of the economies, the warnings
7 that we see everywhere in our State in the conditions of
8 the people who are being displaced from employment by
9 machines cannot be ignored as we sit in this Constitutional
10 Convention.

11 There has been a lot of talk about natural
12 rights as the basis of our Constitution's Bill of Rights
13 based on John Locke's theory of natural rights. The
14 United Nations changed the name a little bit, the
15 appellation, and called it "human rights", and certainly
16 as we sit here today one of the natural rights and one
17 of the human rights of any human being born into the
18 society of our State is the right to have a job, the
19 right to have meaningful employment, if he is able
20 bodied and wants to work, but because machines are
21 displacing men, we have an entirely new problem in

1 unemployment in our nation. It is called involuntary
2 idleness. Whole factories are being displaced because
3 of automation, by the rapidity of the technological
4 advances. It is cheaper for manufacturers to rebuild
5 entire factories in new locations than to attempt to
6 revise and restructure the old machinery in the old
7 location so that all over our nation and even in our
8 cities there are communities of people who are left
9 without employment when factories pull up and move on.

10 Now, there is an old concept of unemployment
11 and poverty which we have got to take a hard look at, and
12 that is that if you want to work, you can get a job and
13 you can pull yourself up by your bootstraps. At Christmas
14 everybody begins to shell out some money to the poor,
15 but none of us are really sitting down to look at this
16 problem in all of its aspects, and if we, with all of our
17 intelligence and creativity, can put a man in outer
18 space, we can solve this chronically continuing high
19 unemployment rate which results from the second industrial
20 revolution.

21 Now, in our own state, the problems are

1 everywhere. I first became aware of it when I interceded
2 for a man who had broken mentally under the stresses and
3 strains of domestic problems and had to go into a mental
4 hospital for recuperation. When I interceded with the
5 steel company where he was employed, there was no longer
6 a job for him in spite of his twelve years of seniority
7 because the company, at a cost of some two million
8 dollars, had installed new machinery which would displace
9 four hundred men who had been working at that plant, and
10 I became aware then and began to give study to the whole
11 situation of the rapid advance of technology and the lag
12 in the preparation by our private sector and public sector,
13 by government and industry in the preparation of, or
14 for the social maladjustments and human maladjustments
15 which result.

16 We cannot afford another depression. I was
17 just coming out of high school in that depression, but
18 the rich people threw themselves out of windows, and the
19 poor people just starved, and the banks shut down and
20 there was no work or little work for most of the people.
21 Then our nation and our states got together and worked

1 together with the kind of programs to put people back to
2 work.

3 Should we wait for another depression?
4 Should we wait for another collapse? Should we fail
5 with all of our intelligence and our ability and our
6 creativity without providing in the life of our state
7 the adequate safeguards to prevent the large scale
8 collapse that we saw in our nation in 1929 and the
9 early thirties?

10 We must face the fact that there are thirty-
11 four million people in our nation, one-fifth of the
12 population, who are living at and below the poverty
13 level which means they do not have the means to live
14 according to the minimal standards of decency and health.

15 This problem affects all sections of the
16 population. There are men of forty who cannot get a
17 job because they are too old, and it is now predicted
18 that children born in our state today will never know
19 what it is to have a job unless we put our minds and
20 our skills and our hearts together to provide for a
21 correlation of the forces of science and the needs of

1 man so that we can have full and continuing employment in
2 our state for those who want to work and for those
3 who are prepared to work.

4 We should know that more and more men of
5 fifty, men of fifty-five, men of sixty, who are physically
6 able, are being sent to pasture because there is no room
7 within our state employment system for them to work,
8 and, of course, with our young people emerging into the
9 mainstream there is chronically high and disproportionate
10 unemployment so that a national economy has pointed
11 out that despite some undulations -- The papers were full
12 this morning of a decrease in the national unemployment
13 rate from August, but then it seesaws up and down.

14 We must face the fact that full time unemploy-
15 ment in our nation rose from 2.9 per cent of the civilian
16 labor force in 1953 to 5.3 per cent during the first
17 half of 1964, and not only are men idle, but physical
18 resources are idle, and there is what economists call a
19 production gap, the difference between actual production
20 and maximum production which rose from an estimated
21 three-tenths per cent of maximum production in 1953 to

1 an estimated 11.7 per cent in the first half of 1964.
2 The chronically rising tide of idle man power and plant
3 correlates with the inadequate United States economic
4 growth rate.

5 What is more important in the life of a man
6 than the right to have a job? There was an old sociologist
7 at the University of Pennsylvania who taught us that work
8 is to man what play is to a child, and we will fail this
9 generation and the generation to come unless we evolve
10 a concept which will be a mandate to the General Assembly
11 and to the executive leadership of our state and in our
12 political subdivisions to come together, private and
13 public, in the private and public sectors, and make
14 provisions for the needs of man.

15 I just call attention to the fact that in
16 Maryland five areas of our state are still designated
17 depressed areas, and eligible for aid under the Federal
18 Area Redevelopment Act of 1961, Public Law 8727, and the
19 following are the standards which are used in determining
20 whether an area is depressed: No. 1, whether there has
21 been chronic, continuing unemployment which is one

1 hundred per cent above the national average in one of
2 the immediate past two years preceding the date of
3 determination, or whether there is seventy-five per cent
4 above the national average of chronic continuing unemploy-
5 ment for the past three years preceding the date of
6 determination, or whether there is fifty per cent above
7 the national average of four years for the past four
8 years preceding the date of determination.

9 Now, what are those areas? Baltimore City,
10 the inner port just escaped being declared a distressed
11 area, but Somerset County, Crisfield, Dorchester County,
12 Cambridge, Garrett County, Oakland area, Prince Frederick
13 area of Calvert County in southern Maryland, and the
14 Cumberland area of Allegany County in western Maryland are
15 still distressed areas in our state, and, therefore, we
16 believe that we should state in our Constitution the
17 right of the citizens to have the state provide for their
18 continuing employment where there is the will to work and
19 where they are physically able, or to train them for the
20 employment in this highly technological age.

21 I would like to say in closing that the bill

1 of rights is the most fundamental and basic of all the
2 articles in our Constitution because it is the foundation
3 upon which the superstructure of government rests, and
4 we must be responsive to the changing needs in our
5 society else there would be no need to meet in a
6 Constitutional Convention for revision and reform, and I
7 say to you again, a nation of affluence, with chronically
8 high unemployment, continuing of a substantial portion of
9 our population, with inadequate preparation made for those
10 who reach the ages of forty, fifty, and sixty, for
11 the lack of the kind of training in our schools that will
12 prepare our young people for this new technological
13 age.

14 We need a mandate to the state to get busy.
15 This state has prior to this time responded only to
16 crisis and it has been government by crisis, and we
17 call for the courage and the foresight of our state in
18 preventing the catastrophe which is ahead, if we will
19 but see it.

20 I will be glad to answer any questions.

21 THE CHAIRMAN: Are there any questions of the

1 spokesman of the Committee?

2 Delegate Beachley.

3 DELEGATE BEACHLEY: May I ask two questions,
4 Mr. Chairman?

5 THE CHAIRMAN: State the questions.

6 DELEGATE BEACHLEY: My questions, Delegate
7 Mitchell, you spoke of the distressed areas throughout
8 the State of Maryland and the first question that I want
9 to ask you is in relation to these distressed areas.

10 What would you consider is the annual income
11 of these people in these distressed areas that might be
12 classified as low income families or impoverished
13 families? What was the amount?

14 THE CHAIRMAN: Delegate Mitchell.

15 DELEGATE MITCHELL: I would use the same
16 standard that the Social Security Administration, U. S.
17 Department of Labor, and the other agencies of our
18 state and federal government have devised as a standard
19 to measure poverty and that is an income to a family of
20 three thousand dollars a year or under.

21 THE CHAIRMAN: Delegate Beachley.

1 DELEGATE BEACHLEY: My second question,
2 Mr. Chairman.

3 You mentioned some statistics about unemploy-
4 ment throughout the United States, but I think we ought
5 to bring this down to the State of Maryland. How many
6 impoverished families, families with incomes below three
7 thousand dollars a year are there in the State of Maryland?

8 THE CHAIRMAN: Delegate Mitchell.

9 DELEGATE MITCHELL: There are one hundred and
10 sixteen thousand three hundred fifty-one families, fifteen
11 per cent of the population of the State of Maryland which
12 today have incomes which are less than three thousand
13 dollars per year. Of that number, twenty-eight thousand
14 have incomes of less than a thousand. That is families,
15 not individuals. Thirty-seven thousand have incomes of
16 less than two thousand dollars a year, and forty-nine
17 thousand have incomes of less than three thousand,
18 between two thousand and three thousand a year.

19 THE CHAIRMAN: Delegate Beachley.

20 DELEGATE BEACHLEY: Mr. President, I do have
21 one more question. That three thousand dollars, do you

1 have any idea how many might be in a family of three
2 thousand?

3 THE CHAIRMAN: Delegate Mitchell.

4 DELEGATE MITCHELL: I believe the standard is
5 a family of four.

6 THE CHAIRMAN: Any other questions of the
7 spokesman for the Committee?

8 Delegate Murray.

9 DELEGATE DOROTHY MURRAY: Can you tell me,
10 Delegate Mitchell, since you have figures readily at
11 your fingertips, can you tell me how many of those people
12 are farm people? Do any of those people live on farms?

13 THE CHAIRMAN: Delegate Mitchell.

14 DELEGATE MITCHELL: I don't have that broken
15 down as to Maryland, but I can tell you, in Maryland,
16 it is pretty well consistent with the national figures,
17 but our farm families, since the Korean War, have been
18 decreased from fourteen per cent to seven per cent of our
19 total population, and to get away from poverty in the
20 farms, the population is migrating to the cities, comprising
21 a hard core of unemployed people without skills and this

1 has no relation to race. It is true of all farm people.

2 THE CHAIRMAN: Delegate Dorothy Murray.

3 DELEGATE DOROTHY MURRAY: I will make a
4 comment later. Thank you, Mr. Chairman.

5 THE CHAIRMAN: Any other questions of the
6 spokesman for the Committee?

7 Apparently none.

8 Delegate Kiefer, do you desire to offer your
9 amendment now?

10 DELEGATE KIEFER: Mr. Chairman, I offer the
11 amendment that has been previously passed out as Amendment
12 E.

13 THE CHAIRMAN: This will be Amendment No. 14.

14 The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No. 14 to Committee
16 Recommendation No. R&P-2 by Delegate Kiefer:

17 On Page 3 strike out all of Section 9,
18 Economic Opportunity, comprising Lines 22 through 30,
19 inclusive, and insert in lieu thereof the following:

20 "Section 9. General Welfare of the People

21 It is the policy of the State that all persons

1 shall have economic security and the opportunity for
2 employment, in order that they may live in decency, dignity,
3 and health. The General Assembly shall continue to
4 implement this policy."

5 THE CHAIRMAN: The amendment is offered by
6 Delegate Kiefer. Is there a second?

7 DELEGATE BENNETT: Second.

8 THE CHAIRMAN: Delegate Bennett seconds the
9 amendment.

10 Delegate Kiefer, do you desire to speak to the
11 amendment?

12 DELEGATE KIEFER: Mr. Chairman, just briefly
13 to say this: First, the Committee considered this matter
14 at some length and we decided that this would be
15 included as a provision in Recommendation No. 2 which is
16 not a section that will be necessarily in the Bill of
17 Rights. In other words, we thought of this as part of
18 the general concept of policies of government and would
19 be in the general provisions.

20 Now, this is not a new concept. I call your
21 attention to Article 43 of the Declaration of Rights as

1 it now exists. It says in part that the legislature
2 ought to encourage the general remuneration of the
3 condition of the people, and we are stating in more
4 modern language the concept that this state is concerned
5 with the general welfare of the people. I have nothing
6 to add to what Delegate Mitchell has so eloquently
7 expressed, and I urge the adoption of the amendment.

8 THE CHAIRMAN: The question arises on the
9 adoption of Amendment No. 14 as a substitute for Section
10 9 of the Committee Recommendation. Is there any discussion?

11 For what purpose does Delegate Gleason rise?

12 DELEGATE GLEASON: Mr. Chairman, I want to
13 speak on the proposal.

14 THE CHAIRMAN: Speak in favor or opposition?

15 DELEGATE GLEASON: In opposition.

16 THE CHAIRMAN: Opposition to the amendment?

17 DELEGATE GLEASON: Yes, sir.

18 THE CHAIRMAN: You may speak.

19 DELEGATE GLEASON: Fellow Delegates, the
20 remarks that we have just heard from Delegate Mitchell --

21 THE CHAIRMAN: Delegate Gleason, I should

1 mention to you that the question now is merely the
2 suggestion of this section for the section that is in the
3 Committee Recommendation. It is not a vote on the
4 adoption of the section.

5 DELEGATE GLEASON: I get the message, Mr.
6 Chairman.

7 THE CHAIRMAN: Delegate Koger, do you wish to
8 speak to the amendment?

9 DELEGATE KOGER: I am opposed to the amendment.

10 THE CHAIRMAN: You may speak.

11 DELEGATE KOGER: Mr. Chairman, ladies and
12 gentlemen, I would like very much at this time, if
13 you would listen very carefully to what I am about to
14 say, because you may find to some extent that my discourse
15 will be somewhat different. I would not like to be
16 misquoted or confused, at least, my statement be confused.

17 Today you have a most unusual condition in
18 the United States. Here in the greatest nation in the
19 world you have extreme riches and power of people living
20 side by side and among a most desperate people. The
21 economic system of this free land of enterprise is

1 completely out of balance. The poor need a break and a
2 lift up the ladder. In this recommendation Maryland
3 is being asked to invest in the economic future of
4 the people of this state. This is a laudable thought,
5 even if it is an impossible one.

6 It is not only that you cannot enforce this
7 recommendation or this amendment, but it may come as a
8 boomerang as it promises a welfare state and I most
9 heartily disapprove of a welfare state.

10 Minorities have agitated for economic
11 opportunities over and over again, and our fight for
12 economic rights, fair housing, employment opportunities,
13 public accommodations, right to vote, adequate education,
14 right to organize, and the right to consumer protection
15 against bad business practices goes on. I think the
16 government should do something about it. I feel it is
17 doing something about it, and should do even much more.

18 Still, I do not believe this amendment adds
19 a thing to this question, but I believe that the recommen-
20 dation may prove to be a haven for lost hopes, lack of
21 industry, ambition, and inspiration.

1 This is not what I feel we need. This is
2 not the answer to the economic opportunity, whether
3 you live in the Appalachian area of Allegany County, or
4 in Cherry Hill, Baltimore City. I, therefore, oppose this
5 amendment.

6 THE CHAIRMAN: The question now arises only
7 on the Amendment No. 14, the substitution of the
8 language in Amendment No. 14 for the language in the
9 Committee Recommendation. Thereafter, you will have
10 the opportunity to speak on the question of whether you
11 favor or do not favor the recommendation at all. For
12 what purpose does Delegate Miller rise?

13 DELEGATE BEATRICE MILLER: I would like to
14 ask Chairman Kiefer what is the meaning of "continual"
15 in Line 12.

16 THE CHAIRMAN: Delegate Kiefer, will you take
17 the floor to yield to a question?

18 DELEGATE KIEFER: Yes.

19 THE CHAIRMAN: State the question.

20 DELEGATE BEATRICE MILLER: Would you tell us
21 what is it that the General Assembly shall continue? To

1 what do you refer?

2 THE CHAIRMAN: Delegate Kiefer.

3 DELEGATE KIEFER: May I yield to Delegate
4 Mitchell who is more, or has it more on her fingertips.

5 THE CHAIRMAN: Delegate Mitchell.

6 DELEGATE MITCHELL: In our deliberations in
7 the Committee, we reviewed the programs for workmen's
8 compensation, the programs for vocational rehabilitation
9 of the handicapped, the other programs which the legislature
10 has enacted as the need grew so serious, and the problem
11 was of such large proportion that they had to act, but
12 we felt that while the legislature had --

13 THE CHAIRMAN: Delegate Mitchell, all Delegate
14 Miller wants to know is what programs you are speaking
15 of and I think if you continue the list you started to
16 give her, it would give her the answer to the question.

17 DELEGATE MITCHELL: But we felt that that was
18 piecemeal, and that the General Assembly had just
19 responded to crisis needs, whereas we feel that there
20 must be a coordination of efforts between all three
21 branches of government and private industry to see that

1 calamities don't happen again.

2 THE CHAIRMAN: Very well. Any further
3 questions?

4 Delegate Bamberger.

5 DELEGATE BAMBERGER: Mr. Chairman, --

6 THE CHAIRMAN: I didn't mean questions. I
7 mean debate on Amendment 14.

8 DELEGATE BAMBERGER: I rise to suggest to the
9 House that we vote Aye to this question and make it
10 perfectly clear that all we are asked to do now is to
11 bring before this House the recommendation of the
12 Committee, not to vote for or against it.

13 You see, the Committee has said we are not
14 so sure that the words in Section 9 on the blue sheet
15 are the words we want. The words we want to present to
16 you are in Amendment No. 14. I should think we should
17 all vote Aye on that so as a matter of procedure we will
18 have before us the Committee report.

19 THE CHAIRMAN: Are you ready for the question?

20 The Clerk will ring the quorum bell.

21 The question arises on the adoption of Amendment

1 No. 14. A vote Aye is a vote in favor of Amendment No.
2 14. A vote No, against. This is merely on the substi-
3 tution of the language in 14 for the language in Section
4 9 of the Committee Recommendation.

5 After your action on this amendment, the
6 Chair will submit to you an amendment proposed by
7 Delegate Scanlan to delete the entire section. Are
8 you ready for the question?

9 A vote Aye is a vote in favor. A vote Aye
10 is a vote in substitution of the language in Amendment
11 No. 14 for the language in the Committee Recommendation.
12 It will then be subject to further amendment. A vote
13 No is a vote against the substitution.

14 Cast your votes.

15 Has every Delegate voted?

16 Does any Delegate desire to change his vote?

17 The Clerk will record the vote.

18 There being ninety-seven votes in the
19 affirmative and thirteen in the negative, the amendment
20 is adopted. The language of Section 9 as it appears in
21 Amendment No. 14 is substituted for the language of

1 Section 9 as it appears in Committee Recommendation
2 R&P-2.

3 Delegate Scanlan, do you now desire to offer
4 your amendment, Amendment "S"?

5 DELEGATE SCANLAN: I do.

6 THE CHAIRMAN: The pages will please distribute
7 Amendment "S".

8 This will be Amendment No. 15. Please modify
9 your amendment by adding after the word "inclusive" in
10 Line 3 the language "as amended by Amendment No. 14".

11 The Clerk will read the amendment.

12 MR. QUILLEN: Amendment No. 15 to Committee
13 Recommendation No. R&P-2 by Delegate Scanlan:

14 On Page 3 strike out all of Section 9,
15 Economic Opportunity, comprising Lines 22 through 30,
16 inclusive.

17 THE CHAIRMAN: The amendment is submitted by
18 Delegate Scanlan. Is there a second?

19 Delegate Schneider.

20 DELEGATE SCHNEIDER: Mr. Chairman, I rise
21 to second this motion.

1 THE CHAIRMAN: The amendment having been
2 seconded by Delegate Schneider, the Chair recognizes
3 Delegate Scanlan to speak to the amendment.

4 DELEGATE SCANLAN: Mr. Chairman, fellow
5 delegates, I persist in what has not always been a
6 pleasant task, namely, attempting to convince this body
7 that they should not put in a new modern Constitution
8 mere aspirations, unenforceable ultimatums, and other
9 unnecessary language. It is especially difficult at this
10 time to oppose the eloquent plea made by Mrs. Mitchell.
11 She not only stated her case with eloquence, she supported
12 it with statistics that demonstrate the truth of her
13 economic position.

14 But I think she would be the first to admit
15 that the problem that she asks the Convention to wrestle
16 with is a national problem. It is not peculiarly a
17 Maryland problem. I submit that if her eloquent speech
18 had been made on the floors of the Congress, it would have
19 more meaning, more relevancy, and would be entirely in
20 proper order.

21 It is the national government and only the

1 national government that ultimately can win the war
2 against poverty if that war is to be won. In effect,
3 the language even as now proposed by the Committee, as
4 amended by Amendment No. 14, asks this Convention to
5 write into the Constitution what is either the full
6 employment act of Maryland or a snare and delusion,
7 a statement of pious hope that no action on the part of
8 Maryland alone could ever achieve.

9 She mentioned the depressed areas of this
10 state as there are in many other states, but again,
11 defining those areas, the attempt to raise those areas
12 to the level where they are no longer subject to such an
13 opprobrious classification as "depressed" is a fight
14 maintained by the federal government with the full sweep
15 of the federal power including the full sweep of the
16 taxing power.

17 To ask the State of Maryland singlehandedly
18 to take on this battle is really to ask the impossible.

19 Moreover, while I am not unsympathetic with
20 the economic theory embraced in Amendment No. 14, it is
21 really a welfare state concept. I am not sure that

1 any particular economic theory, whether it be the
2 economic theory of free enterprise or the economic
3 theory of the welfare state or the partial welfare
4 state should be frozen into the Constitution.

5 THE CHAIRMAN: You have one-quarter minute,
6 Delegate Scanlan.

7 DELEGATE SCANLAN: A long time ago, I need not
8 say what Supreme Justice said that he didn't think the
9 Fourteenth Amendment froze Herbert Spencer's social
10 statistics into the Fourteenth Amendment and I think
11 the same point could be made here. This is a national
12 problem. It can only be solved by national effort. To
13 write something in the Constitution which is unenforceable,
14 I hope it is unenforceable, to write this into the
15 Constitution, is a snare and delusion.

16 Unlike some of the other things you have done
17 in the last few days like permitting the right to
18 organize collectively and making clear equal protection
19 of the laws clause prohibits segregation or discrimination
20 on the basis of race, creed, or color, there we granted
21 substantive rights. Here we have a platitude that no

1 state action could ever achieve and to put it in our
2 Constitution is to delude the people who most need it. I
3 urge strongly that you delete this Section 9.

4 THE CHAIRMAN: Delegate Kiefer, do you desire
5 to speak to the amendment?

6 DELEGATE KIEFER: Mr. Chairman, ladies and
7 gentlemen of the Committee, we have put in this Consti-
8 tution the right of labor to organize. I don't know why
9 we would not put in this Constitution the right of people
10 to have, or at least to state the policy of this state,
11 that people in this state shall have economic security.
12 This doesn't guarantee them anything. It does state a
13 policy. It is not unlike policies that are stated in
14 other state constitutions where the state simply recognizes
15 that it is simply concerned about the welfare of the
16 people. It is true, as Delegate Scanlan says, that it
17 is a matter of policy. It doesn't make the welfare
18 state. This doesn't do anything of that sort, but I
19 think for us to leave out any reference of our concern
20 about the general welfare of our people and their right
21 to life, liberty, and dignity is something that we ought

1 to be ashamed of and I, therefore, urge the adoption of
2 this, or the rejection, pardon, the rejection of this
3 amendment.

4 THE CHAIRMAN: Is there any further discussion?
5 Are you ready for the question?

6 The Clerk will ring --

7 Delegate Schloeder.

8 DELEGATE SCHLOEDER: Mr. Chairman, I would
9 like to rise to oppose the Scanlan amendment. I rose
10 to blow on the dice a few times last evening, but I
11 think Mr. Scanlan is wrong here to attempt to delete this
12 section.

13 I am reminded of what Edmond Burke said in a
14 speech in the House of Commons on conciliation to the
15 American Colonies. He said that it is not what lawyers
16 tell me I may do, but what reason, justice, and humanity
17 tell me I should do.

18 For many of us the real history of this
19 country is the fulfillment of the promises of the
20 Declaration of Independence, a fulfillment of the promise
21 that all men are created equal. It is the life, liberty,

1 and the pursuit of happiness. Pursuit of happiness means
2 either equal chance of all people to set for themselves
3 goals and to move positively toward the attainment of
4 those goals. A Constitution is a basic and fundamental
5 law of the state, and goes far beyond the question of
6 judicial pensions or whether or not a comptroller will,
7 in fact, controls.

8 A Constitution is an instrument of government
9 and as such it is a social as well as a legal document and
10 should provide in part at least for a promise of enlighten-
11 ment. It is not simply an article or an instrument for
12 lawyers to argue over or judges to ponder on. After
13 all, judicial decisions are not made in a vacuum. They
14 are arrived at in an atmosphere where it must by necessity
15 reflect the spirit and sense of the time. It was Chancellor
16 Kent who said the law as a science is only a collection
17 of general principles founded on moral law, and in the
18 common sense of mankind and applied to particular cases as
19 they arise by diligent members of the bar, and at the
20 erudition of the courts.

21 I suggest that the language of Mrs. Mitchell's

1 amendment is one of those principles founded on moral
2 law, and in the common sense of mankind, and for that
3 reason we should reject the Scanlan amendment and thus
4 make it clear that we are indeed of this time and place,
5 and that we too would do what we can to fulfill the
6 promise of the Declaration of Independence.

7 THE CHAIRMAN: Any other Delegate desire to
8 speak in favor of the amendment?

9 Delegate Gleason.

10 DELEGATE GLEASON: Mr. Chairman, I would suggest
11 to the Delegates assembled that the remarks we have heard
12 from the sponsors of this Committee Amendment are the
13 wool and the warp that political speeches are made of and
14 any remarks that have any effectiveness in the ability to
15 carry out the effect of the policy embodied in this
16 amendment must be done on the legislative floor of the
17 General Assembly or in the Congress of the United States.
18 I think the Delegates will recall during World War II
19 when out on a boat in the Atlantic Ocean Franklin
20 Roosevelt made his great speech in enunciating four
21 freedoms. He said people should have freedom of speech and

1 expression. That was all right. People should have
2 freedom of worship. That was all right. Government
3 could do something about those, but then he went too far.
4 He said, people should have freedom from want and freedom
5 from fear. I suggest to you if you look at this amendment
6 that is before us, when we say that the policy of the
7 state should be that all persons shall have economic
8 security in order that they may live in decency, dignity,
9 and health, I suggest to you that all the economic
10 security in the world will not assure that any person will
11 live in dignity, decency, and most of all, live in
12 good health. We can say about the same thing about the
13 injunction in there for opportunity of employment.

14 You will recall President Kennedy when he was
15 alive made a statement that we are always going to have
16 injustice with us. A lot of us sympathize with our
17 economically deprived, people who are suffering injustices,
18 but this is no place in the Constitution where we are
19 setting up powers by which government shall operate to
20 attempt to redress those imbalances in our society. If
21 there is any way those imbalances are redressed, they

1 are done in the public and private sector of our economy
2 and not in the Constitution.

3 We should throw this one out, stand up
4 proudly as we could so --

5 THE CHAIRMAN: Any other Delegate desire to
6 speak against?

7 Delegate Lloyd Taylor.

8 DELEGATE LLOYD TAYLOR: Mr. Chairman, fellow
9 Delegates, I would like to make a brief statement against
10 the amendment. I want to say that when we gave a tax
11 break to agricultural uses of land, we were giving a
12 subsidy to a special class of Maryland citizens. I
13 shall read from the Yale Law Journal an article by Charles
14 Wright, just two paragraphs. He said "Analogous to
15 welfare payments for individuals who cannot manage
16 independently in the economy are subsidies to business.
17 Agriculture is subsidized to help it survive against better
18 organized and less competitive sectors of the economy,
19 and the shipping industry is given a dole because of
20 its inability to compete with foreign lines. Local
21 airlines are also on the dole. So are other major

1 industries, notably housing. Still others, such as the
2 railroads, are eagerly seeking help. Government also
3 supports many non-business activities, in such areas as
4 scientific research, health, and education. Total
5 federal subsidies for 1964 were expected to be just under
6 eight and a half billion dollars.

7 Dependence creates a vicious circle of dependence.
8 It is as hard for a business to give up government help
9 as it is for an individual to live on a reduced income.
10 And when one sector of the economy is subsidized, others
11 are forced to seek comparable participation. This is
12 true of geographical areas; government contracts can
13 fundamentally influence the economy of a region. It is
14 also true of different components of the economy. If
15 one form of transportation is subsidized, other types
16 of transportation may be compelled to seek subsidies.
17 When some occupations are subsidized, others, which help
18 to pay the bill, find themselves disadvantaged as a
19 class. Thus, it is not strange to find musicians seeking
20 a subsidy, perhaps to pay food bills that are made
21 artificially high because of another subsidy.

1 We find in the State of Maryland and through-
2 out this country ship lines, airlines, are subsidized
3 by the government. We find the housing industry subsidized
4 by the government, and, my friend, Delegate Koger, will
5 find that the insurance industry benefits from subsidies
6 of the government. We have put in a subsidy of the farmers
7 of this state. Therefore, under this constitutional
8 principle we should and must provide economic opportunity
9 for the people who are in need, and if we can do this for
10 one class of citizens we can do it for all classes of
11 citizens.

12 I sponsored an amendment that would provide
13 a certain amount of rights and economic benefits to
14 all citizens and that includes not only the poor, but
15 the middle class. For instance, when I worked for the
16 welfare department, we helped people who worked every
17 day. They were in need of assistance to pay their hospital
18 bills, and I remember talking to a woman whose husband
19 earned fifteen thousand dollars as an engineer, and she
20 needed help to pay for a relative in a state hospital.
21 We subsidize people every day in the State of Maryland

1 in the area of hospital care and these are people who
2 are working. They have to pay hospital bills. They
3 take from their rent and food money. This principle
4 has been established in the State of Maryland. If we
5 can help the working people in this state who are
6 working, and subsidize them with hospital benefits, I
7 am sure we can do it for all citizens, and I want to say
8 briefly --

9 DELEGATE JAMES: Your time has expired.

10 DELEGATE LLOYD TAYLOR: I want to finish my
11 statement because in a few years we will be paying a
12 hundred dollars a day for hospital bills and how many
13 people can afford this? The State of Maryland will have
14 to assist these people whether they are working or not
15 working and these are not only low income people.

16 DELEGATE JAMES: Does anyone wish to speak?

17 Delegate Adkins.

18 DELEGATE ADKINS: Mr. Chairman, ladies and
19 gentlemen, I will be very brief.

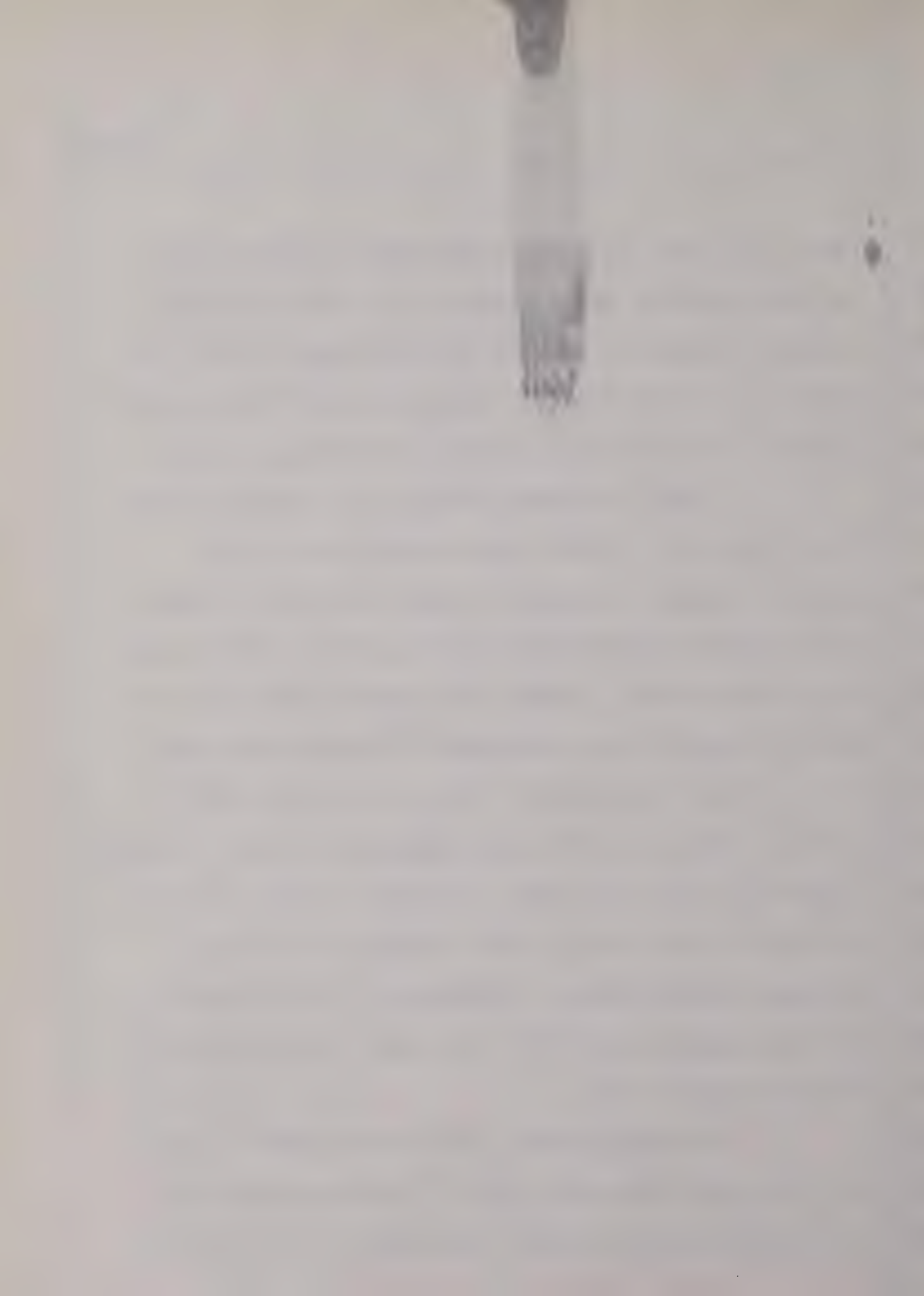
20 The aims and aspirations of this proposal
21 have been a spur to mankind's progress for a thousand

1 years. We have not accomplished the aims and objects
2 of this proposal, and I suggest to you that we cannot
3 mandate the General Assembly of this state to do in any
4 session of the forthcoming General Assembly what mankind
5 has not been able to do throughout his entire period.

6 Worthy as these objects are, I suggest to you
7 that to put this in this Constitution will be in a
8 sense to mislead the people of this state into thinking
9 that we have done something for them which each Delegate
10 in his heart knows, in fact, we have not been able to do
11 and could not do if we sat here for another ten years.

12 There was earlier talk in connection with the
13 consumer protection about the products which are frequently
14 labeled as giant quart size. I suggest to this Convention,
15 to place in this Constitution language as lofty in
16 purpose, as meaningless in execution, and as impossible
17 of performance as this one is to label this Constitution
18 the giant quart size.

19 As one Delegate, I am not prepared to submit
20 to the people a document which I consider would be as
21 misleading as this document would be if it held out the



1 hope inherent in this proposal without the necessity or
2 the ability to carry out that hope. I would urge the
3 amendment be adopted.

4 DELEGATE JAMES: Delegate Bennett.

5 For what purpose does Delegate Pullen rise?

6 DELEGATE PULLEN: I want to oppose the amend-
7 ment.

8 DELEGATE JAMES: I recognize Delegate Bennett.

9 DELEGATE BENNETT: Mr. Chairman, ladies and
10 gentlemen of the Committee, I went along with Delegate
11 Scanlan in opposing some of these amendments initially,
12 but I know when the Convention has spoken and what its
13 intents and ideas are, and I am willing to accept that
14 decision and not continue to reiterate and object to
15 what their plain meaning is.

16 What we have here is trying to establish a
17 concept. A concept is a goal. We are not writing a
18 constitution alone of restraints and retributions and don'ts.
19 We are undertaking to set up certain goals and if ever
20 there has been a goal in this nation, it is the concept
21 of economic security. It has been implemented on the

1 national level by the old age security, unemployment,
2 and I think we can well set forward that goal here. We
3 don't have to resort to a lot of outworn chivalries
4 about the welfare states and about laissez faire in
5 the economy and about rugged individualism. That went
6 down to the worse defeat in history. We are here to set
7 goals. One of the specific reasons that we need this is
8 because as time goes on perhaps it is indeed going to
9 be possible for the states to share some of the revenues
10 that are now being collected by the federal government, and
11 if that day comes, if we are to strengthen our state
12 government and get rid of the federal bulldozer, then we
13 have got to have something in our Constitution that sets
14 the direction toward which we are going and the direction
15 toward which we are going is the protection and upholding
16 of individual worthiness, dignity.

17 That is the goal we want to set, and I think
18 that this is not holding out a vain hope to the people of
19 Maryland at all. It is setting a goal towards which we
20 shall go and I hope indeed that Mr. Scanlan's amendment
21 is defeated and if necessary, we can go to the merits of

1 this proposal. If there is something worthy in this,
2 let's do it.

3 DELEGATE JAMES: Does anyone wish to speak in
4 favor of the amendment?

5 The Chair recognizes Delegate Koger.

6 DELEGATE KOGER: Mr. Chairman, ladies and
7 gentlemen, I would just like to make sure that the
8 remarks that I made previously are now recorded in support
9 of this amendment. In addition to that, I would like
10 to state that I believe this is a dangerous type of
11 policy. I do most sincerely. It holds out to the
12 people a promise which is unattainable and we would be
13 holding out to the people something that the American
14 system of government does not work for, and that is the
15 right to work, the right to be ambitious, the right to
16 get some place, and to do something, and I think that when
17 we reach a certain point we have got to call a halt.

18 I think if we can get all of the things
19 that we are working for, fair employment, housing, work
20 opportunities, good education, protection against -- In
21 other words, I think we have to work forward along the

1 line and not along the welfare state.

2 DELEGATE JAMES: Does anyone wish to speak
3 favorably?

4 DELEGATE BOROM: I wish to speak in
5 opposition.

6 DELEGATE JAMES: Does anyone wish to speak in
7 favor?

8 Are you ready for the question?

9 DELEGATE BOROM: I would like to speak
10 in opposition to the amendment.

11 DELEGATE JAMES: Delegate Borom wishes to
12 speak for it? We are still in favor. Delegate Gill,
13 Delegate White, do you wish to speak in favor of the
14 amendment?

15 DELEGATE WHITE: I am against.

16 DELEGATE JAMES: Do you wish to speak for?

17 DELEGATE WHITE: I wish to speak against the
18 amendment. Mr. Chairman, I rise to speak against this
19 amendment. It would do the same thing which the amend-
20 ment proposed to do which we defeated sometime ago. I
21 plead with you, let us not permit Alfred Scanlan to

1 scandalize this Constitution.

2 Mr. Chairman, Members of this Convention, when
3 I left the fourth district of Baltimore City, I promised
4 that I would not forget from whence I had come, and I
5 haven't, but if I were to listen a few minutes it would
6 appear one of my cohorts has the hand of Jacob but has the
7 voice of Aesop. When he gets back home he will wonder
8 what happened to him.

9 Fellow Delegates, a lot of things have happened
10 in this Convention. It seems that a lot of people in
11 Maryland do not trust our judgment. We voted for the
12 single member districts, but it would appear that those who
13 hope to save the destiny of this Convention are going to
14 great lengths to convince us that we must move backward,
15 retreat from this position.

16 Mr. Chairman, maybe this gets into the area of
17 personal privilege, but at this time some of the Delegates
18 of this Convention are being pressured. They are being
19 told that if you do not switch your vote from the single
20 member district to the multi-member district that then we
21 shall withdraw our vote for economic opportunity.

1 Mr. Chairman, it is getting pretty rough. Mr.
2 Chairman, we have used a lot of time. I have listened
3 for the past six weeks to lawyers, but my voice now is as
4 strong as theirs, but I think there is necessary a certain
5 amount of restraint. We have spoken again and again on
6 the same subject and we have lost motion for reconsideration
7 after motion for reconsideration and when we get into an
8 area like this we sit quietly and suppinely by and watch
9 a proposal like this go down the drain.

10 I learned one thing, Mr. Chairman, that when
11 you don't appear to have the votes or you have taught
12 me this since I have been down here. If you don't have
13 the votes, keep on talking. So I ask for some help.
14 All of those who stand with me, let's keep on talking.

15 Thank you, Mr. Chairman.

16 DELEGATE JAMES: The Chair recognizes Delegate
17 Borom to speak in favor.

18 DELEGATE BOROM: I want to speak against.

19 DELEGATE JAMES: Speak against. The Chair
20 recognizes Delegate Borom.

21 DELEGATE BOROM: Thank you, Mr. Chairman.

1 I am like Delegate Harry Taylor in the back
2 row. When they gather the sense of the Committee, at
3 this time I think they do gather it, but I think it is
4 hard to speak. I think the unfortunate thing
5 is the Committee is ready to move, and I think it
6 is most unfortunate that the issue about which we are
7 speaking now is one that most of you really cannot
8 appreciate.

9 It is unfortunate. I have watched this
10 Committee operate. I have listened to the attorneys, the
11 arguments they have made for their particular case, for
12 the things that they think are important, and I think
13 they are important too. For as long as you hold this in
14 your hand that you understand and you think it is
15 important, you work for what you think is right. I think
16 in this case this particular policy statement is a weak
17 one, but I think it is right.

18 Apparently the policy statement is as far as
19 you go. If you go no further than that, I ask you go
20 that far. Within the past week I happened to be watching
21 it very carefully, and I listened to one of our leading

1 senators in the United States. He says our whole country
2 is in trouble. We have problems. He commented that our
3 country has a wealth of economic and natural resources and
4 yet we have problems. He continued by saying our biggest
5 problem is our country does not have the will to do what
6 it knows it has to do, and I think this is what we are
7 confronted with today, the will to do what we know is right.

8 I would agree with Delegate Adkins to a
9 certain extent, that we put this policy statement in,
10 and it may not have any real effect, but if we are going
11 to deal with it, as we have done with other parts of the
12 Constitution, for any say, I would say let's put a policy
13 statement in and let's build an article around it so that
14 when we get through we not only have the policy state-
15 ment, an innocuous policy statement, but we also have the
16 machinery by which this state moves.

17 We can petition for roads. If this state can
18 find the funds to build roads and do all the other things
19 that it thinks are important and forget people then I
20 think the state is remiss.

21 I don't think we have to wait for the federal

1 government. One of the earliest statements I referred
2 to before is we don't want to wait for the federal govern-
3 ment to do everything for us. I think the time is now.
4 We should move. If we pass this particular amendment,
5 then I think we should consider putting into this
6 Constitution whatever is necessary to implement a wide-
7 spread policy for providing for citizens in our state.

8 I have watched you tinker with the technical
9 aspects of our government. You can get the finest piece
10 of machinery set up that you want to, but if you don't
11 have people behind you and take care of human resources,
12 the rest will go. All we need is the will. We have got
13 the economic and natural resources.

14 Thank you.

15 DELEGATE JAMES: Are you ready for the
16 question?

17 The Chair recognizes Delegate Bamberger.

18 DELEGATE BAMBERGER: Mr. Chairman, I rise to
19 speak against the amendment.

20 I do not believe that a Constitution must
21 express --

1 DELEGATE JAMES: For what purpose does the
2 Delegate rise?

3 DELEGATE HUTCHINSON: Mr. Chairman, I believe
4 this is the third person in a row.

5 DELEGATE JAMES: The Chair is a little
6 confused. I think the people for the amendment have a
7 right to speak next. Do you wish to speak for the
8 amendment?

9 DELEGATE HUTCHINSON: Yes, I do.

10 I have heard some people say since I have been
11 sitting in this Chair and since this issue has come
12 before this Convention that it is a good idea. I have
13 heard people say, yes, it is a good idea, but we cannot
14 implement this idea. I submit to you that we don't want
15 to implement this idea. This is everything that is
16 against the American capitalistic society. I don't care
17 how much you laugh at that, how much you think that is a
18 ridiculous idea, but as far as I am concerned, when we
19 put something like this in a state constitution, I don't
20 care what kind of constitution it is, federal or state,
21 it is still government action in private affairs. I

1 think this is the worse thing that this state can do. I
2 think it is the worse thing that could ever happen in
3 this country.

4 I say to you to support the amendment and strike
5 out this ridiculous part of this Constitution and this
6 Committee Recommendation.

7 DELEGATE JAMES: Delegate Bamberger.

8 DELEGATE BAMBERGER: Mr. Chairman, I rise to
9 speak in opposition to the amendment.

10 No constitution should be written by political
11 theorists and no constitution should be written by a
12 computer. Constitutions are written by people, and every
13 constitution expresses the particular hopes and aspira-
14 tions and the crises of the civilization in which it is
15 written.

16 The great difference in our society of today,
17 the great crisis in our society, is not the difference
18 between black and white and yellow and red. The great
19 problem for our society and for our capitalistic society
20 is the difference between the rich and the poor, the
21 great tragedy within the most affluent nation in the world.

1 One-fifth of the people in this nation do
2 not have sufficient money for decent food and decent
3 clothing. If we were truly representatives of the people
4 of the State of Maryland, twenty-eight of us would sit
5 here without decent clothing or housing or food. That
6 is how severe the problem is.

7 I do not believe we do any violence to
8 principles of constitutional draftsmanship if in 1967 we
9 express our concern about the most severe problem in our
10 society.

11 I urge you to vote against the amendment.

12 DELEGATE JAMES: Does anyone wish to speak
13 in favor of the amendment?

14 Does Delegate Pullen wish to speak in favor of
15 the amendment?

16 DELEGATE PULLEN: No, sir.

17 DELEGATE JAMES: Does anyone wish to speak in
18 favor of the amendment?

19 Does anyone wish to speak against the amend-
20 ment?

21 Delegate Pullen.

1 DELEGATE PULLEN: Mr. Chairman, I want to say
2 that I think the quality of oratory has improved
3 considerably. I think it is real nice. I want to say
4 also, however, that there is no one individual in this
5 room who believes in the capitalistic society more than
6 I, but at the same time I want to say this: In my opinion,
7 there is no freedom without economic freedom.

8 DELEGATE JAMES: Does anyone wish to speak?

9 Let's see. Where are we? Does anyone wish to
10 speak for?

11 Delegate Key?

12 DELEGATE KEY: No.

13 DELEGATE JAMES: Does anyone wish to speak
14 against the amendment?

15 Delegate Key.

16 DELEGATE KEY: I had not planned to speak at
17 all, but Delegate Hutchinson stood up and sort of roused
18 within my breast, and words will not stay in. I think the
19 crash of 1929 killed the true capitalistic form of
20 government that we once enjoyed. We have been on the road,
21 a detour from that, since the Roosevelt administration of

1 1930.

2 Now, our Constitution does in its preamble
3 recognize that all political power originates in the
4 people, and that all government is instituted to secure
5 their right to life, liberty, and the pursuit of happiness.

6 Now, Delegate Pullen just stole by next sentence.
7 There is no freedom without economic freedom. There is no
8 liberty without economic freedom, and there is no life,
9 real life, without economic security. So having recognized
10 in our Constitution that political power originates in
11 the people and that all government is instituted to
12 secure these rights of life, liberty, and the pursuit of
13 happiness, I want you also to recognize the same political
14 power and the same government has to work to secure that
15 economic freedom that is necessary for any other, before
16 any other can be secured, and don't ever forget that
17 socialism, that we just don't want to mention, but we
18 do have parts of, is for the rich and free enterprise
19 as much as it is for the poor.

20 DELEGATE JAMES: Anyone wish to speak for the
21 amendment?

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1 Delegate Hanson.

2 DELEGATE HANSON: Mr. Chairman, I rise to speak
3 for the amendment with a sense of real despair. I
4 happen personally to believe everything that is said
5 in the proposal of the Committee. I believe it is
6 right. I believe it is just, and I believe it ought to
7 be the policy of the State of Maryland. I just don't
8 believe it ought to be in the Constitution of the State
9 of Maryland. I don't believe it ought to be in the
10 Constitution of the State of Maryland because I think
11 it is utterly meaningless in the Constitution of the
12 State of Maryland.

13 Where I think it has meaning is in the marching
14 orders of the political parties, in the laws of this
15 State, in its administration of justice, in the compassion
16 of its officials and in the discussion of the laws. I
17 think in the Constitution it has a meaning equal to those
18 words in the 1867 Constitution that said monopolies are
19 odious, contrary to the spirit of a free government,
20 principles of commerce, and ought not to be suffered
21 and this in the Constitution hasn't stopped

1 one of them from developing or those words in that
2 Constitution that said that the legislature ought to
3 encourage the diffusion of knowledge and virtue and it
4 ought to, but I submit, ladies and gentlemen, we are
5 not any more knowledgable or virtuous by the fact of these
6 words being in the Constitution than we would be if they
7 aren't in the Constitution. That is unfortunate. I
8 deplore it, but I don't think we help ourselves. I
9 think we are kidding ourselves. I think we are kidding
10 the people of this State if we put into the Constitution
11 words that we cannot enforce, words that we have no
12 capacity to find self enforcement for.

13 This doesn't guarantee us anything. I think
14 the right of collective bargaining which we agreed to
15 yesterday does guarantee us something. It is an important
16 right. I think economic freedom is very important. I
17 think we ought to dedicate ourselves to work for it. I
18 think we ought to insure that it gets enacted into the
19 laws of this State, but I do not see the utility of
20 putting it in the Constitution. I don't believe that this
21 advances us one step toward a better annual income for

1 any person in the State or improves the economic well-
2 being of any person in the State. If we have before us
3 amendments which will do that, I will gladly vote for
4 them. I will gladly help develop amendments if we can
5 develop them for the Constitution that will achieve that
6 objective. This, unfortunately, does not do it. I am
7 afraid it is a sham.

8 DELEGATE JAMES: Are you ready for the question?

9 I see some eager Delegates who would like to
10 be heard. Does anyone wish to speak in favor?

11 Delegate Miller, do you wish to speak in
12 favor?

13 DELEGATE BEATRICE MILLER: I have been up
14 six times now.

15 DELEGATE JAMES: Do you wish to speak in
16 favor, Delegate Clagett?

17 DELEGATE CLAGETT: I am speaking in favor of
18 the amendment.

19 DELEGATE JAMES: We will have to find someone
20 who is speaking against.

21 Delegate Beatrice Miller.

1 DELEGATE BEATRICE MILLER: Mr. Chairman, I
2 will be very brief. Ever since Mr. Scanlan gave us the
3 reason for his proposal in which he said that this is not
4 a state problem, this is a federal problem, I have been
5 very distrubed. If we adopt that philosophy of Delegate
6 Scanlan, then I think we might as well pack up and go
7 home right now because that is what this Convention is
8 all about.

9 This Convention is about building a state
10 constitution for a state that will accept its role and
11 its share of the responsibilities. Whatever the outcome
12 of the vote on this amendment, I would hope that no one
13 votes on it because he considers this only a federal
14 problem and not a problem of the state.

15 Furthermore, I would point out that what the
16 original proposal of the Committee as amended says is
17 a very limited suggestion. It talks about opportunity
18 for employment and it says the General Assembly shall
19 continue to implement this policy.

20 I think that, as a guide to the General
21 Assembly of what the thinking of this Convention was and

1 for the future, this is a most important proposal.

2 DELEGATE JAMES: Delegate Hardwicke, do you
3 wish to speak for the amendment?

4 DELEGATE HARDWICKE: I am against the amendment,
5 Mr. Chairman.

6 DELEGATE JAMES: Does anyone wish to speak
7 for the amendment?

8 Does anyone wish to speak against the amendment?

9 Delegate Clagett, do you wish to speak for the
10 amendment?

11 DELEGATE CLAGETT: Mr. Chairman, I wish to
12 speak for the amendment only to give the degree of
13 encouragement that is necessary for the thirteen hardy
14 souls who voted against Amendment No. 14 and where those
15 persons who have had a degree of time now to reconsider
16 their votes even though we are fully in accord with the
17 policy, nevertheless, the advisability is the question that
18 really must be met here and, therefore, I strongly urge
19 that this motion be approved.

20 DELEGATE JAMES: Delegate Hardwicke, you wish
21 to speak against the amendment?

1 DELEGATE HARDWICKE: Yes, Mr. Chairman.

2 This is a bill of rights, a statement of the
3 fundamental freedoms of man. It has been said necessitous
4 man is not free man and the freedom of religion, the
5 freedom of expression, the freedom of assembly, all of these
6 freedoms are hollowed and meaningless for man who is
7 necessitous.

8 The Bible in the Old Testament talks about the
9 right of the poor in four places, twice in Isaiah and twice
10 in Psalms and there, the unjust judge is discussed as the
11 man, as the judge, who deprives the person who is poor of
12 justice.

13 I submit to you, ladies and gentlemen, that this
14 is the most important right, this right to be free from
15 necessity and to be free from want.

16 The object of capitalism must be to guarantee
17 the rights that are set forth in this particular section.
18 This is the purpose of capitalism.

19 Communism has always insisted that capitalism
20 cannot achieve this purpose. I submit to you this
21 afternoon, ladies and gentlemen, that this is our challenge,

1 this is the most important challenge of our generation. I
2 hope we will rise to this challenge and include this section
3 in our new Constitution.

4 DELEGATE JAMES: Anyone wish to speak to this
5 question?

6 (Cries of "question")

7 DELEGATE JAMES: I notice a desire to submit the
8 question. The Clerk will ring the quorum bell.

9 Cast your votes.

10 Has everyone recorded his vote?

11 The Clerk will record the vote.

12 Mr. Vice President, do you want me to vote for
13 you?

14 DELEGATE CLARK: Yes.

15 DELEGATE JAMES: Has everyone recorded his vote?

16 The Clerk will record the vote.

17 71 votes in the affirmative and 41 in the
18 negative, the amendment is adopted.

19 Excuse me. 72 and 40 is the final calculation.

20 DELEGATE JAMES: Delegate Clarke.
21

1 DELEGATE CLARKE: Personal privilege, Mr. President.

2 DELEGATE JAMES: The Chair recognizes Delegate
3 Clarke.

4 DELEGATE CLARKE: Mr. President, as you know and
5 perhaps many others here, but perhaps some don't, in the near
6 future a great portion of the tourist and convention business
7 that has been going elsewhere will remain in the State of
8 Maryland. One of the principal reasons for this is the great
9 effort put forth to build the Ocean City Auditorium. The
10 chief sponsor of this step forward in the House of Delegates
11 was and still is the Honorable Russell Hickman of Worcester
12 County who is seated in the balcony to the rear of the
13 chamber. Please greet him.

14 (Applause.)

15 DELEGATE JAMES: Any further amendments to Section
16 9? The Chair recognizes Delegate Carson.

17 DELEGATE CARSON: Mr. Chairman, for the record, I
18 unintentionally voted wrong for the last one. I wanted to
19 vote in favor of the amendment, and somehow I voted against
20 it. We need not change the record, I just would like the
21 tape to show that.

1 DELEGATE JAMES: I think we are all entitled to
2 one erroneous vote and I have cast at least one, maybe two.

3 Any further amendments to section 9? If not, we
4 will pass on to section 10.

5 The Chair has on his desk an amendment submitted
6 by Delegates Bothe et al. Has the amendment been distributed?
7 It is marked "F." Amendment F. Has that been distributed?
8 The pages will distribute Amendment F. Does everyone have a
9 copy of Amendment F?

10 It is a very simple amendment. I will ask the
11 Clerk to read it. It just strikes out the section.

12 (Laughter.)

13 MR. QUILLEN: Amendment No. 16 to Committee
14 Recommendation No. R&P-2 by Delegates Bothe, Bennett,
15 Bamberger, Bradshaw, Byrnes, Dulaney, Gallagher, Hanson,
16 Henderson, Hopkins, Johnson, Koss, Lord, Macdonald, Marion,
17 Morgan, Moser, Mosner, Powers, Scanlan, Schnieder, Sherbow,
18 Winslow.

19 "On page 3 Section 10 Criminal Jury, Judge of Law
20 and Fact strike out all of lines 32 through 39, inclusive,
21 comprising all of Section 10."

1 DELEGATE JAMES: The Chair recognizes Delegate
2 Bothe.

3 For what purpose does Delegate Moser rise?

4 DELEGATE BOTHE: I yield to Delegate Moser.

5 DELEGATE JAMES: Delegate Moser has the floor to
6 speak on the amendment.

7 DELEGATE MOSER: Is there a quorum?

8 DELEGATE JAMES: You want a quorum call. All
9 right. The Clerk will ring the quorum bell.

10 The members will record their presence on a
11 quorum call.

12 Has everyone recorded his presence? The Clerk
13 will record the quorum call.

14 A quorum being present, the Chair recognizes
15 Delegate Moser to speak on the amendment.

16 DELEGATE MOSER: Mr. Chairman and ladies and
17 gentlemen --

18 DELEGATE JAMES: We will have to have a little
19 order in here. Even though we are members of the Consti-
20 tutional Convention, we should have manners.

21 MR. MOSER: There was a memorandum prepared by

1 Delegates Bothe, Macdonald and myself that was distributed
2 to you last Friday, I think, and it gives the historical
3 background of the juries as judges of the law provision
4 which is in our present Constitution and which Section 10
5 would continue. It sets forth the reasons why we suggest
6 this is an anachronistic arrangement and should not be
7 continued in the new Constitution.

8 I am hopeful that by providing the setting the mem-
9 orandum may serve to avoid spending unnecessary time debating
10 and explaining this provision which it does.

11 I also refer to a memorandum which Delegate
12 Churchill Murray distributed and in which is set forth --
13 and in which are set forth his views for the opposing
14 position.

15 By deleting Section 10, "Criminal Jury, Judge of
16 Law and Fact," this Convention will permit the same type of
17 procedure to apply in civil cases as apply in criminal
18 cases with respect to instructions of judges and agreements
19 of counsel. This difference in procedure which exists by
20 reason of Section 10 has been a source of confusion to jurors
21 for years. We submit that the time has now come to remove

1 this confusion and to bring Maryland into line with
2 virtually all the other 50 states and the federal courts. As
3 we point out in the memorandum in paragraph 1, every eminent
4 authority that has reviewed this provision has recommended
5 its deletion. It has been called -- I keep having something
6 placed in front of me here.

7 DELEGATE JAMES: This must be a diversionary
8 tactic.

9 DELEGATE MOSER: Since all of you have copies, I
10 won't read it. Delegate Rybczynski may want to.

11 (Laughter.)

12 DELEGATE MOSER: In any case, it has been called,
13 as I mentioned before, anachronistic in one Court of Appeals
14 case, an anomalous situation which should not be permitted
15 to remain as a blight upon the administration of justice in
16 the State of Maryland, archaic, outmoded, and atrocious, a
17 thorn in the flesh of Maryland's body of criminal law by
18 authorities such as Chief Judge Prescott of the Court of
19 Appeals, Judge Henderson, Chief Judge Dennis of the supreme
20 bench of Baltimore City.

21 As Delegate Hargrove told you yesterday, I think

1 a commission on which he served and which is headed by former
2 Chief Judge Frederick Bloom recently is recommending the
3 abolishment of this provision. Judge Sobeloff, as I point
4 out on page 1 of the memorandum, writing for the Fourth
5 Circuit Court of Appeals, notes that we are meeting in
6 convention and that we will consider it and by implication
7 suggests that this be removed.

8 The reasons for removing it are set forth and there
9 are five in number, the major reasons. In the first place,
10 the 1851 Convention, when it was first adopted, adopted it
11 under a misconception of what the Common Law of England was.
12 They adopted it because there was a multitude of different
13 procedures with respect to rulings on questions of law among
14 the various courts of Maryland and they thought that they
15 were providing the type of consistency which England sought
16 to provide. Now actually this wasn't the case because --
17 I won't go into technicalities, but there was an act known as
18 Foxes libel law which changed the law in England in criminal
19 libel cases and they thought this was enunciative of the law
20 of England. But in any case, whatever the reasons, they
21 no longer exist.

1 The second reason for abandoning this provision
2 is that some 50 years ago there were ten other jurisdictions
3 at least that had it. All of them have abandoned it one way
4 or the other except for Indiana, and Indiana, as is pointed
5 out I think in the committee report, has rendered it virtually
6 useless because the judge is not required to charge the
7 criminal jury that they can disregard the instructions. This
8 is a requirement under Maryland law.

9 The main present effect, and this the bad reason,
10 is that it tends to confuse criminal juries and subverts
11 justice. What happens is that prosecutors and defense counsel
12 get up and argue different propositions of law to the jury
13 and each of these may differ from the judge's instructions.

14 I have done this myself as a prosecutor and at
15 least on one occasion when it was done I think that an in-
16 justice occurred, that is to say that someone was convicted
17 of an offense for which he probably should not have been
18 convicted and the reason for it was that I was permitted, in
19 fact expected, to argue the law to the jury.

20 It puts a undue emphasis on clever advocacy and
21 persuasiveness and I suggest that there is sufficient realm

1 in arguing facts to a jury for this without confusing juries
2 by arguing law as well.

3 In fact, the jury is handcuffed. They can't take
4 the lawbook that the prosecutor and defense counsel use in
5 the jury room with them and they don't have these tools to
6 help them decide the case.

7 Another reason for deleting it is that this
8 provision encourages inconsistency in results of criminal
9 trials.

10 A final reason is that it doesn't mean what it
11 says because in fact the juries are not really judges of the
12 law in the true sense as the amendment suggests, but this
13 has been somewhat curtailed in recent years. If it were
14 given literal meaning, it is perfectly clear that it would
15 violate the equal protection and due process law in the U.S.
16 Constitution and therefore would be void. There is ab-
17 solutely no reason for continuing this in the present day,
18 particularly with all of the real protections that the
19 Supreme Court is now requiring the states to afford criminal
20 defendants.

21 We respectfully suggest that this archaic

1 provision is unnecessary and that it harms the accused as
2 much as it helps him.

3 DELEGATE JAMES: Anyone wish to speak against the
4 amendment? Delegate Willoner?

5 DELEGATE WILLONER: Mr. Chairman, when I spoke on
6 this in presenting the majority report, I indicated to the
7 body when I came down here that I thought this provision was
8 archaic and outmoded until I began to do some research on
9 it and began to develop some questions which I may add in
10 discussing with Delegates Bothe and Moser have not been
11 satisfactorily answered.

12 The case of Sharp and Hanson v. The United States
13 is a case of first degree murder where the judge was pre-
14 cluded from instructing or refused to instruct on the issue
15 of manslaughter.

16 The Supreme Court held that this was appropriate
17 since the evidence was only susceptible of one interpreta-
18 tion, first degree murder, and therefore a manslaughter in-
19 struction was inappropriate.

20 We in Maryland do not follow that practice. I
21 contend that when the Commission took this out of the present

1 Constitution, they gave this absolutely no thought at all.
2 There is no research to explain why they took it out or how
3 it was taken out.

4 In the area of eminent domain, the Commission
5 proposal was such that we would have had to add the off-
6 street parking and the urban renewal provisions of our
7 present Constitution to have it comply with the rulings of
8 the Maryland Court of Appeals. This body should be well
9 aware, when they are taking out this matter that they may
10 be substantially changing the law in this state and they
11 don't propose to tell us how it is changed. I would agree
12 that at one time it was a thorn, as they called it, a con-
13 stitutional thorn. Judge Dennis wrote a law review article
14 on it. What he was objecting to was that the state couldn't
15 appeal. That is a doctrine foreign to us today; the state
16 should have a right to appeal. But the procedural provisions
17 were solved when the amendment permitting the judges to
18 determine the sufficiency of the evidence was added to this
19 provision. I would read to you what Judge Henderson said
20 about this in 1947.

21 "At the 1947 session of the General Assembly the

1 Junior Bar Association proposed an amendment to this
2 provision of the Constitution eliminating the provision that
3 the jury shall be the judges of the law, but the bill was
4 defeated."

5 Possibly the proposal was considered too revolu-
6 tionary or drastic. Doubtless many members of the General
7 Assembly felt that the provision has not outlived their use-
8 fulness. I am not disposed to disagree with them. My
9 quarrel is not with the provision, but with the procedural
10 practice derived from it. Now as I understand it, and
11 Judge Henderson will correct me if I am wrong, he did not
12 like the procedure where you could not agree or the judges
13 could not determine the sufficiency of the evidence, and I
14 agree with him in that regard. The minority doesn't tell us
15 the effect of it. There has been no research which has been
16 developed which would tell what leaving this out would do to
17 the law of Maryland.

18 DELEGATE JAMES: Delegate Henderson, do you speak
19 in favor?

20 DELEGATE HENDERSON: I do.

21 DELEGATE JAMES: The Chair recognizes Delegate

1 Henderson.

2 DELEGATE HENDERSON: Mr. Chairman and fellow
3 members, since I have been quoted or referred to by Mr.
4 Willoner, I feel that I must first try to make my position
5 perfectly clear.

6 In 1947 I became interested in this subject. At
7 that time I was serving on the Court of Appeals and I
8 delivered a paper on the subject before a law club and became
9 interested in the matter. Chief Judge O. L. Marbury and
10 Judge Markle who were my colleagues on the court at that
11 time urged me and I was asked by the executive committee to
12 make a speech before the Bar Association at Atlantic City
13 which I did, and that is the paper to which he referred
14 which was published in 1947.

15 Since this had been the subject of wide publicity
16 before, and the efforts to change it which had been proposed
17 by such eminent authorities as Judge Markle, Chief Judge
18 Dennis and Judge Chestnut from the federal bench, all un-
19 availing, my approach was not to attack or make a frontal
20 attack on the amendment, which I would have preferred to do,
21 but accepting the amendment to point out the many features

1 which probably would render all our criminal decisions un-
2 constitutional under the 14th Amendment. I proposed in my
3 paper therefore that there be four different modifications.
4 One involved the amendment of the Constitution to permit the
5 passing on the sufficiency of the evidence by the trial
6 court and opening the case to appeal.

7 The second one was a mandatory rule of court
8 requiring the trial courts to give advisory instructions
9 on the law to the jury so that that was absolutely mandatory
10 on his part and opening those instructions to review on
11 appeal.

12 DELEGATE JAMES: Thirty seconds, Delegate Hender-
13 son.

14 DELEGATE HENDERSON: There were several other
15 matters which were accomplished there. For one thing, the
16 rules of court were amended to provide that this did not
17 apply as it had before to a judge who was sitting without a
18 jury. In those ways we managed to close some of the avenues
19 so that the Supreme Court, even though it had the appeal on
20 certiorari refused to grant a hearing and has not yet ruled
21 on it.

1 I fully agree with Delegate Moser that the time
2 has come that this outmoded thing which has outlived its
3 usefulness and still presents an element of constitutionality
4 under the 14th Amendment should be deleted.

5 DELEGATE JAMES: For what purpose does Delegate
6 Bothe rise?

7 DELEGATE BOTHE: My purpose was to ask questions
8 of Delegate Willoner at such time as that is appropriate.

9 DELEGATE JAMES: I believe this is a time for de-
10 bate and a time for questioning will come later.

11 Delegate Sollins, do you wish to speak against the
12 amendment?

13 DELEGATE SOLLINS: I have a question of Delegate
14 Moser.

15 DELEGATE JAMES: First I want to recognize the
16 people who wish to speak for and against, and then we will
17 have a question period.

18 Does anyone wish to speak against?

19 DELEGATE BOTHE: The answers to questions which
20 I and perhaps other delegates may wish to pose may bear on
21 the nature of the debate.

1 DELEGATE JAMES: Let me recognize Delegate Dorsey
2 and then we will have the questions.

3 DELEGATE DORSEY: Mr. President and ladies and
4 gentlemen of the Convention, for 100 years this provision
5 has been in the Constitution of Maryland and in the adminis-
6 tration of criminal justice in this state. It has worked
7 well. I have sat on both sides of the counsel table as
8 state's attorney and as defense counsel, and I have never
9 observed any miscarriage of justice because a jury was the
10 judge of both the law and the fact.

11 For the last 50 years there have been attempts
12 made to take this provision out of the Constitution of
13 Maryland. All of those attempts have failed. It was
14 amended so that the courts could pass on the sufficiency of
15 the evidence. I feel that that is a good provision. I have
16 said for 100 years it has worked in this state, so why change
17 for the sake of change.

18 I hope, ladies, and gentlemen, that this amend-
19 ment will fail.

20 DELEGATE JAMES: Delegate Bothe, do you wish to
21 ask a question of Delegate Moser?

1 DELEGATE BOTHE: Delegate Willoner.

2 DELEGATE JAMES: Delegate Willoner, do you wish
3 to yield?

4 DELEGATE WILLONER: I am always glad to yield to
5 a young lady.

6 DELEGATE JAMES: Delegate Bothe.

7 DELEGATE BOTHE: I might point out, Mr. Chairman,
8 that I don't believe this provision was very thoroughly
9 presented when the committee's recommendation came before the
10 Committee of the Whole, and for that reason, I would like
11 an opportunity perhaps to ask more questions than would
12 otherwise be appropriate.

13 DELEGATE JAMES: Are you asking Delegate
14 Willoner a question?

15 DELEGATE BOTHE: I am asking you the leave to ask
16 him several questions.

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1 DELEGATE JAMES: Delegate Willoner's time has
2 expired. After we hear the debate, maybe we can have a
3 question period. It seems to the Chair that Delegate Willoner's
4 time has expired.

5 Let me check with the Parliamentarian on this.

6 Proceed with the questions. I think that is the
7 simplest thing to do.

8 Delegate Bothe.

9 DELEGATE BOTHE: Delegate Willoner, you have
10 indicated that the recommendation for deletion is unsupported
11 by any evidence, and that we may by failing to continue
12 the provision be making major changes in the law and
13 procedure of the State, and I wonder if you could state
14 specifically what kinds of changes we could be making,
15 keeping in mind that that four states of the Union would
16 be operating under the same system as we will be if this
17 section is deleted?

18 DELEGATE JAMES: Does Delegate Willoner understand
19 the question?

20 DELEGATE WILLONER: I understand the question.
21 However, there is a premise in the question that I don't

1 agree with, and that is that the four states in the Union
2 are operating without this provision. I don't know how
3 48 States in the Union are operating without this provision.
4 Perhaps they have managed when they have eliminated this
5 rule, they have managed to have other rules take its place
6 that would have solved the questions I raised.

7 I have raised these questions to Delegate Bothe
8 and Delegate Moser, and the question was where you have
9 inconsistent verdicts as was indicated as in the Green case,
10 or in Sharpe and Hanson v. the United States, you have
11 instructions or where the evidence was clearly first
12 degree could you have second degree and manslaughter instruc-
13 tions, and they are not sure.

14 Secondly, would this result in the United States
15 versus Green situation where if a jury found you not guilty
16 of a first degree murder in a felony murder situation, and
17 found you guilty of a second degree murder, that verdict
18 could not stand, and if they tried you again for first
19 degree murder, jeopardy attached.

20 DELEGATE BOTHE: Is it your opinion, Delegate
21 Willoner, that if this provision were removed from the State

1 Constitution that juries would not be free to render
2 verdicts as they saw fit based on the evidence?

3 DELEGATE WILLONER: Under our law, the jury has the
4 power to disregard. There is nobody in this body will deny
5 that no man could be found guilty on the judgment of a
6 judge or should I say no man can have a directed verdict
7 against him, direct a jury to find him guilty.

8 The judge does not have that power. Apparently
9 under this case law -- and I will admit I have not done a
10 complete and thorough research job -- but I think the burden
11 is on those who would make a change to do this research
12 job.

13 It would appear to me this would raise a problem,
14 whereby if the jury did come in with a verdict which was
15 inconsistent with the facts, the judge could, or the court
16 could reverse the decision, because if it were robbery and
17 there weren't any issues, and they came in with assault with
18 intent to rob, where there was virtually uncontradicted
19 evidence in that, could the verdict stand?

20 I don't know the answer to that. It appeared that
21 it couldn't stand from the few cases I looked at.

1 DELEGATE BOTHE: I know that you personally have
2 been both a prosecutor and defense counsel. Is it your
3 personal opinion that juries should be able to decide what the
4 applicable law is?

5 DELEGATE JAMES: Delegate Willoner.

6 DELEGATE WILLONER: There are times when I think
7 that is true. We have a rather poor definition of the
8 premeditated murder in Maryland. The courts have developed
9 it. I can certainly think from the debates we have had
10 today, maybe judges and lawyers aren't so smart about the
11 law after all.

12 But we have premeditation in Maryland that is
13 described roughly as the deliberation it takes to aim a
14 pistol for the second shot is enough to be premeditated
15 murder, and I know it is very difficult to get a jury to
16 convict unless it is a police officer or some person like
17 that that is shot.

18 Juries disregard that instruction, although there
19 is no doubt that two shots were fired, and they were shot
20 at the vital part of the body.

21 So the juries do in fact disregard. I am not

1 so sure that they are right in those circumstances.

2 I have abandoned first degree when I didn't think
3 it was first degree, even though under the law it was first
4 degree.

5 DELEGATE BOTHE: You haven't answered my question
6 now. Do you feel that defense counsel and the prosecutor
7 should be at liberty to argue law to the jury which is not
8 the law of the State of the land?

9 DELEGATE JAMES: Delegate Willoner.

10 DELEGATE WILLONER: No.

11 DELEGATE JAMES: Delegate Mentzer.

12 DELEGATE MENTZER: I would like to speak in
13 favor of this amendment..

14 DELEGATE JAMES: Is there a series of questions?

15 DELEGATE BOTHE: I have one more.

16 Will you agree that this can be and often is
17 the practice in the criminal courts of this state under
18 the present provisions of the Constitution?

19 DELEGATE JAMES: Delegate Willoner.

20 DELEGATE WILLONER: No, I say it is not the practice.
21 If somebody argues that which is not the law anywhere in

1 the United States or in the State of Maryland, then you
2 can object to that, and the judge will usually sustain your
3 objection. At least, he always sustained my objections and
4 arguments of law that were not sound arguments of
5 law, and I think that is an appropriate way of handling it.

6 DELEGATE JAMES: Delegate Mentzer, you wish to
7 speak in favor of the amendment?

8 DELEGATE JAMES: Yes.

9 Mr. Chairman, I have never been a lawyer, and
10 I have never served on a jury. I do not hope ever to be
11 a lawyer, but I do hope to some time serve on a jury. When
12 that day comes I know I will have enough trouble deciding
13 on the facts involved.

14 I do not wish to decide on the law involved. As
15 a non-lawyer I wholeheartedly support this amendment.

16 DELEGATE JAMES: Does anyone wish to speak against
17 the amendment?

18 Delegate Stern.

19 DELEGATE STERN: Delegate Mentzer, one day you
20 may want to decide the law if you are on the jury. We had
21 a case in Prince Georges County where a woman, the wife of

1 a Congressman, went to each bedroom and shot and killed
2 four of her children. She was found by the psychiatrist
3 to be sane. The jury found her to be sane. At that point,
4 I felt as defense counsel there were only two decisions that
5 they could bring in, either not guilty, or first degree
6 murder.

7 Under the Maryland law the jury compromised and I
8 felt it was an excellent compromise. The jury found her
9 guilty of manslaughter, and the judge sentenced her to ten
10 years in prison for each of the deaths, to serve concurrently.

11 That woman has tried to commit suicide at least
12 four times. Had they found her guilty, the judge could have
13 sentenced her to death. Had they found her not guilty I
14 am positive she would be dead within a week by her own hand,
15 and the jury could not have brought in manslaughter if this
16 was not in our Constitution. The jury would have either had
17 to find her not guilty, and then tried to live with themselves
18 knowing that she did shoot those four children, or found her
19 guilty, and take the chance that she would be put to death
20 anyway.

21 And perhaps, through the years that she is

1 incarcerated for less than life imprisonment, she could be
2 helped through psychiatric and mental care which she is
3 now receiving, and then return to society.

4 Without that provision that woman would never
5 have had that opportunity except to spend additional years,
6 many years as an additional punishment instead of once,
7 being corrected mentally, and returned to her place in
8 society.

9 DELEGATE JAMES: Delegate Sherbow.

10 DELEGATE SHERBOW: Mr. Chairman and ladies and
11 gentlemen of the committee. I had hoped I wouldn't have
12 to speak on this particular subject, because it was so
13 simple and plain, but some of the non-lawyer members of the
14 convention have expressed to me the fact that they are
15 still in doubt. We used these words, anachronistic,
16 outmoded, let me tell you exactly what it means:

17 There never was a better opportunity to have a
18 verdict brought in that did not meet with the law than there
19 is under this kind of an old, outdated rule.

20 Here is what happens. If you are involved in
21 a simple automobile accident case, personal injury or

1 property damage, the judge will turn to the jury and give
2 them his instructions on the law. He will tell the jury
3 what the law is, and he will tell them that they are bound
4 by his statement to them of what the law is.

5 And the jury in its function as a fact-finding
6 body decides what the facts are under the law as the court
7 has given it to them, each taking its own place in our scheme
8 of justice.

9 But when you come to a criminal case which may
10 be one involving the question of whether the crime was
11 robbery, whether it was receiving stolen good, whether it
12 was larceny or whether it was embezzlement, and all the
13 complications involved in all of those descriptions of what
14 the law may be, the judge has to say to the jury: "Ladies
15 and gentlemen of the jury, what I have told you about the
16 law is not binding on you. It is advisory only."

17 In other words, a jury of lay people is supposed
18 to be able to figure out for themselves what the complicated
19 law may be in a given case.

20 Now, if they get fooled and the verdict is
21 not guilty, there can't be another trial, there can't be

1 any correction of it. All I can say to you is this: Somebody
2 somewhere ought to be thinking of that great body of people
3 and that is those who are the general public. I am in favor
4 of all the restraints and restrictions, even those that have
5 come down from the Supreme Court benefit and protect the
6 individual on trial, but I want to say to you, we have got
7 imbedded in our Constitution and have a chance of taking it
8 out, one restraint and restriction on a fair trial. We
9 ought to take it out. It is old, and it does not serve a
10 proper purpose.

11 I hope you vote for the amendment.

12 DELEGATE JAMES: Does Delegate Sollins wish
13 to speak against the amendment?

14 DELEGATE SOLLINS: I wish to ask Delegate Moser
15 a question.

16 DELEGATE JAMES: Will Delegate Moser yield to
17 the gentleman?

18 DELEGATE MOSER: Yes, I will yield, sir, and after
19 I answer I would like to correct the record.

20 DELEGATE SOLLINS: In the event your amendment is
21 approved, will not the legislature be able to re-establish

1 this rule by statute?

2 DELEGATE MOSER: I am not sure. I can't answer
3 the question. They might be able to.

4 DELEGATE SOLLINS: I have another question.

5 DELEGATE JAMES: Delegate Sollins.

6 DELEGATE SOLLINS: In the event your amendment
7 is approved, and it is not in this Constitution, and the
8 Constitution is ratified, what will be the rule, in effect,
9 in criminal jury trials from May 14, 1968 until such time
10 as the General Assembly chooses to act, or not to act.

11 DELEGATE JAMES: Delegate Moser.

12 DELEGATE MOSER: If the Constitution is effective
13 on July one of this year, which I would assume it would be,
14 the law would be just exactly what it is in every other
15 state, and this I take it -- the law of Maryland, now, as
16 it stands, doesn't differ from other jurisdictions in the
17 Green case type situation, as I understand that case. It
18 is the same.

19 DELEGATE JAMES: Delegate Sollins:

20 DELEGATE SOLLINS: Just one last question:

21 Do you think any transitional legislation will

1 be required in the event your amendment is approved.

2 DELEGATE JAMES: Delegate Moser.

3 DELEGATE MOSER: I would not think that it is
4 required. If you feel that it is I am sure the committee that
5 is considering it would take it under advisement.

6 DELEGATE JAMES: Does anyone wish to speak
7 against the amendment?

8 For what purpose does Delegate Moser rise?

9 DELEGATE MSER: I would like to correct one
10 statement which I made which corrected some misund erstanding.

11 When I presented this, I said an injustice occurred
12 in a case that I prosecuted, and I don't think it came
13 out very well. The facts of the situation were fairly
14 complicated. The facts were in dispute, and the law was in
15 dispute. It was a murder case.

16 The better verdict would have been manslaughter.
17 The person was convicted of second degree murder.

18 But the situation was remedied by the sentence, so
19 it wasn't the difference between acquittal and a conviction,
20 however, I think the situation may not have arisen if
21 the prosecutor were not expected to argue law, as well as

1 fact.

2 DELEGATE JAMES: For what purpose does Delegate
3 Anderson rise?

4 DELEGATE ANDERSON: I rise to speak against the
5 amendment and in favor of the majority report.

6 DELEGATE JAMES: Delegate Anderson.

7 DELEGATE ANDERSON: Mr. Chairman, as the former
8 State's Attorney in Anne Arundel County for a number of
9 years, and as a practicing attorney for a good many years,
10 I would like to say that I found the jury system in the
11 trial of criminal cases satisfactory, whether I was defending
12 or prosecuting.

13 I think I can conscientiously say during the
14 entire period of time when I was State's Attorney, I never
15 knew of an innocent man convicted, or a guilty one escaping.

16 I think that the criminal law, and especially
17 with a trained or experienced prosecutor, is comparatively
18 simple. You can read the basic law to him, you can explain
19 it to him. You can read it out of the book to him, and
20 likewise the defense can do the same thing, and therefor I
21 feel, speaking purely from experience, that I think it would

1 be a mistake to take this provision out of our Constitution.

2 I have noticed people here in this convention
3 watching their personal and civil rights mighty carefully,
4 and I warn them that this would be a grave mistake, both
5 for the people as well as the accused.

6 DELEGATE JAMES: For what purpose does Delegate
7 Sherbow rise?

8 DELEGATE SHERBOW: I am not really certain I
9 accept the answer that was given by Delegate Moser ---

10 DELEGATE JAMES: I don't believe Delegate Anderson
11 is finished.

12 DELEGATE SHERBOW: I beg your pardon.

13 DELEGATE JAMES: Delegate Anderson, please finish.

14 DELEGATE ANDERSON: I have about finished. I will
15 not take the time to detail those things that were mentioned
16 by Delegate Moser, but I think I owe it to the people to
17 say that I certainly hope that they will retain this
18 privilege that they have in criminal cases.

19 DELEGATE JAMES: For what purpose does Delegate
20 Sherbow rise?

21 DELEGATE SHERBOW: For the purpose of perhaps giving

1 a different answer from the one given by Delegate Moser
2 to Delegate Sollins' question. I call the Convention's
3 attention to the fact that under Section 5.01 of the
4 judicial branch, we have provided that the judicial power
5 of the state is vested exclusively in the unified judicial
6 system, etcetera, and I would suggest that under the terms
7 of that entire article, all judicial power being vested
8 in the court, that the legislature would not have the power
9 to vest a jury with the power to make itself a judge of
10 the law in any case.

11 DELEGATE JAMES: Delegate Mason, do you wish to
12 speak in favor?

13 DELEGATE MASON: Yes, sir.

14 DELEGATE JAMES: You may proceed.

15 DELEGATE MASON: I rise to speak in favor of the
16 amendment, Mr. Chairman.

17 I have had the opportunity of trying to uphold
18 this particular section of the Constitution on many
19 occasions in the Court of Appeals, and in the Federal Courts,
20 and we have been successful, so far, but I suggest that
21 if the Supreme Court ever hears argument and receives

1 briefs on this particular section, I feel that they will
2 declare it unconstitutional.

3 Now, Maryland and Indiana are the only two states
4 that have this particular section. This theory of the judge
5 shall be the judge of the law has been decisively rejected
6 by the Supreme Court and all the federal court systems.

7 The reasons for the unpopularity of this provision
8 is its fundamental unfairness. It denies the right of the
9 accused to be tried by the fixed law of the land, it fosters
10 uncertainty in the law, it places the function of legal
11 interpretation in the hands of persons who are unqualified
12 for such a function. It fails to provide the accused of
13 due notice of the crimes of which he is charged, and of
14 which he may be convicted, or even due notice after a
15 conviction of the crime for which he stands convicted, and
16 it results in differing enforcement of the laws depending
17 upon different legal views of various jurors.

18 The latest case on this particular section was a
19 case of Roger Reilly, which went to the Supreme Court on writ
20 of certiorari, which the Supreme Court denied.

21 The Fourth Circuit in its opinion stated "It is
noteworthy that the Maryland Constitutional Convention

1 Commission which is currently drafting proposals for
2 submission to a Constitutional Convention to be held next
3 year has under consideration a proposal to delete section
4 5 from the Constitution. Indeed, a subcommittee has found
5 that the leaders of the Maryland State Bar Association
6 have already recommended this step.

7 "There is thus less reason for a court, especially
8 a federal court, to anticipate the people of the state in
9 effecting a change in a constitutional policy."

10 I suggest to you fellow delegates, although this
11 particular provision of the statute of the Constitution has
12 been held Constitutional, but it has never received the
13 full treatment in the Supreme Court, and if it does I suggest
14 it will be held unconstitutional.

15 DELEGATE JAMES: Does anyone wish to speak
16 against?

17 Delegate Churchill Murray.

18 DELEGATE CHURCHILL MURRAY: Mr. Chairman and fellow
19 delegates: I would like to approach this from an entirely
20 different point. I feel obliged to quote Delegate Jett
21 two or three days ago when he said "For whom are we preparing

1 this Constitution? Are we preparing it for the attorneys
2 of this State? Are we preparing it for the people of the
3 State? "

4 And, I might add, is there not a meeting ground
5 between all?

6 I don't want to digress except that I think I
7 should say when I notice the names that are affixed to this
8 amendment, I shudder with the ability and knowledge that
9 stands behind it.

10 On the other hand, it happens that I have had an
11 unusual amount of jury experience. I feel that someone
12 should speak on the matter from the standpoint of the
13 layman, and therefore I do so.

14 I recognize that it is unique, and I do not
15 think that that is a reason either to keep it, or to
16 discard it. I think that there are three basic questions.
17 If these gentlemen behind me can hear me, how do we have
18 it? Whence did it come? Should we keep it?

19 We and our ancestors in England have had it
20 for at least 200 years. I can't trace it back of that.
21 Sir William Poultney, who lived from 1684, and I don't think

1 these statistics mean too much, but for those who are
2 impressed by antiquity, 1684, to 1764 in his verse called
3 "The Honest Jury", says "For 12 honest men have decided
4 the cause, who are the judges alike of the fact and the
5 law."

6 Walpole, who lived at the same time, said "I
7 would rather face another man's word than support Poultney's
8 tongue."

9 Would that I had supported his tongue.

10 DELEGATE JAMES: Delegate Murray, your time has
11 expired, but you may complete the sentence or two in
12 your statement.

13 DELEGATE CHURCHILL MURRAY: May I rise again,
14 because it would take four or five minutes to put this in --

15 DELEGATE JAMES: Your time has expired.

16 DELEGATE CHURCHILL MURRAY: There is no advantage
17 in going on unless I can present it as an entire idea.

18 A DELEGATE: May I yield my time, please?

19 DELEGATE JAMES: If there is unanimous consent,
20 will extend you -- how much more time will you require?

21 DELEGATE CHURCHILL MURRAY: About three minutes.

1 DELEGATE JAMES: This is a little bit too much.
2 We might be able to extend you 30 seconds, or a minute, but
3 we would have to afford this privilege to everyone, and I
4 don't think we can violate the rules to this extent.

5 For what reason does Delegate Bennett rise?
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1 DELEGATE BENNETT: I rise to ask unanimous
2 consent that this interesting bit of history be put in
3 the record and that Delegate Murray be granted two minutes
4 additional .

5 DELEGATE JAMES: All in favor say aye, opposed,
6 no. This is an unusual honor accorded you, sir.

7 DELEGATE E. C. MURRAY: What is the duty, what
8 is the duty of a criminal juror? Is it not to adjudge
9 the criminal guilt of his fellow man in the light of the
10 time and place of the criminal act?

11 The attitude toward a given act in one part of
12 the State may vary considerably from another, and the
13 attitude today may vary tremendously from the attitude
14 30 years, 20 years, 40 years ago when the law was enacted.

15 It permits the juror to judge his fellow man
16 as he would expect to be judged.

17 When our ancestors embodied this protection for
18 themselves in our Constitution of 1851, they obviously
19 believed it to be wise. Today we have a very different pre-
20 cedent in the action of the Supreme Court of the United
21 States who today base theri judgments not solely upon the

1 wording of the law, but with regard to changing times.

2 DELEGATE JAMES: You have 30 seconds, Delegate
3 Murray.

4 DELEGATE E. C. MURRAY: Thank you.

5 Can you imagine our Supreme Court today render-
6 ing the same decisions on the same wording as did Chief
7 Judge Carney, who sits with his back to us to avoid
8 embarrassment, I am told?

9 Thank you very much, and fellow delegates,
10 thank you very much for allowing me the additional time.

11 I recognize that this does violence to the
12 specific tenets of many, many learned jurists but I submit
13 that if you take this out, you will be taking something
14 away from the citizens of Maryland.

15 DELEGATE JAMES: The Chair recognizes in the
16 gallery H. Walker Lewis, the author of The Life of Roger
17 B. Tawney. He might take offense at that remark.

18 Is there anyone who wishes to speak for the
19 amendment?

20 Delegate Byrnes?

21 DELEGATE BYRNES: Yes, Mr. Chairman.

1 I would just like to remind the Committee of
2 the Whole that very recently we adopted a committee
3 recommendation, that we had an equal protection clause
4 in our own Constitution and I would think the intent of
5 the protection clause should be the minimum, that all laws
6 of the state apply equally to all men of the state and I
7 would think this is the intention of this amendment.

8 I would suggest that you adopt it.

9 DELEGATE JAMES: Does anyone wish to speak against
10 the amendment?

11 Delegate Weidemeyer.

12 DELEGATE WEIDEMEYER: Mr. President, I would
13 like to state briefly that I am opposed to the amendment.
14 This matter has been before the lawyers for several years
15 and it has been argued pro and con and some of the lawyers
16 who were opposed to this in our Constitution have been
17 down before the Legislature trying to get them to pass
18 a Constitutional amendment to take it out, but the
19 majority have always prevailed, I think, and we have
20 left it in our Constitution.

21 It has been in there over a hundred years, and

1 I think it is well. It is only a few rare occasions like this
2 that I hear the theoreticians say we should take it out.

3 I was glad to hear what Delegate Willoner
4 said because he practiced law on both sides, as a prosecuting
5 attorney and as a defense attorney.

6 I was equally glad to hear what Delegate Dorsey
7 and Anderson said.

8 Not only have they handled this matter from the
9 prosecution attorney standpoint, they have handled it and
10 operated under it as defense attorneys and both of them have
11 had vast experience on the bench, so from many angles
12 they have seen that this is a good workable provision
13 and should be left in the Constitution, and I hope this
14 amendment fails.

15 DELEGATE JAMES: Delegate Storm, do you wish to
16 be recognized?

17 DELEGATE STORM: I was going to give a little
18 homily example of how this works justice.

19 DELEGATE JAMES: You are against the amendment?

20 DELEGATE STORM: Yes.

21 DELEGATE JAMES: Does anyone wish to speak in

1 favor of the amendment? .

2 DELEGATE BARRICK: Mr. Chairman, I have had a
3 lot of misgivings about this particular subject matter.
4 I was a State's Attorney and came down here in '59 to
5 introduce a bill in the Senate to take this provision out
6 of our Constitution. That bill failed. I suspect the
7 reason it failed was That there were too many defense
8 attorneys in the legislature at the time. I believe now
9 that with all the provisions that the Supreme Court has
10 given to the criminals, all the advantages that he now
11 receives through the recent decisions of the Supreme Court,
12 that I must agree with Judge Sherbow in that we ought
13 to think about the people.

14 I think this is imperative now that we do take
15 this out, and it will be for the benefit of the people
16 and maybe help to balance the scale as far as all the
17 other decisions of the Supreme Court passed recently.

18 DELEGATE JAMES: Anyone wish to speak against the
19 amendment? .

20 Delegate Storm?

21 DELEGATE STORM: That little example I was

1 talking about, Frederick City law provides that you can
2 have Sunday movies after a certain hour. Emmittsburg in
3 Frederick County can have Sunday movies after a certain
4 hour, but just outside of Frederick City, there was an
5 outdoor theater which could not have Sunday movies at any
6 time.

7 The gentleman who owned the outdoor movie was
8 brought into court and charged with Sabbath-breaking. The
9 jury in its wisdom said he is not guilty.

10 Technically I suppose he was, but they certainly
11 showed good sense and I think ye of little faith rely on
12 the common sense of the jurors in applying this.

13 They can reach a proper end in justice that no
14 other way can be achieved.

15 DELEGATE JAMES: We will now give opportunity
16 for someone who is for the amendment. Delegate Carson.

17 DELEGATE CARSON: Mr. Chairman, ladies and gentlemen,
18 I will be very brief.

19 With all respect to my good friend Delegate
20 Storm, I think he is wrong. Before being admitted to
21 the Bar, I had the pleasure of serving three years as a

1 law clerk for Judge Day in the Circuit Court for Harford
2 County. I saw consistently the State's Attorney there
3 reading the jury the law. I saw two murder cases in which
4 the jury returned life imprisonment, in which had mandatory
5 instructions been given, I am sure the jury would have re-
6 turned no greater than manslaughter and two manslaughter
7 in the House of Corrections today for life because of
8 this provision.

9 I have no question occasionally it lets the
10 guilty go free but also sometimes it puts the innocent in.
11 It provides even-handed justice. I think we are here to
12 provide for equal justice for all and I support the amendment
13 and urge you to vote in favor of it.

14 DELEGATE JAMES: Are you ready for the question?

15 Delegate Willoner, for what purpose do you rise?

16 DELEGATE WILLONER: I just wanted to answer one
17 question real quickly. One is that Judge Sobolov this year,
18 1967, ruled this provision to be Constitutional, although
19 he disliked the provision.

20 I just want to make it clear that I do not think
21 it is an unconstitutional provision; at least until

1 some court says it is, I think we ought to leave it in.

2 DELEGATE JAMES: Are you ready for the question?

3 The clerk will ring the quorum bell.

4 Has everyone recorded his vote?

5 The Clerk will record the vote.

6 There being 68 votes in the affirmative,
7 46 in the negative, the amendment is adopted.

8 Are there any further amendments? There
9 could be no further amendment to Section 10 since the
10 Section has apparently been eliminated so we will proceed
11 to Section 11 and ask if there are any amendments to
12 Section 11.

13 The Chair hearing none, we will proceed to consider
14 Section 12, right of removal of criminal cases.

15 The Chair recognizes Delegate Kiefer.

16 DELEGATE KIEFER: Mr. Chairman, I do not want
17 to prolong this. I do not want to invite trouble, but it
18 has not been explained and Delegate Weidemeyer is prepared
19 to do so and I believe there ought to be a brief
20 explanation of what it is all about.

21 DELEGATE JAMES: Delegate Weidemeyer, do you

1 wish to come forward to explain the section?

2 DELEGATE WEIDEMEYER: Mr. President and Delegates
3 of the Committee, my assignment was to cover two
4 sections, Section 11 and also Section 13.

5 Section 11 provides for indictment by grand
6 jury, and as you know, we have indictment by the grand
7 jury now, although there was no specific provision in
8 the Constitution requiring grand jury. However, in our
9 present Declaration of Rights, in Article XXI it was by
10 implication because in Article XXI of our present declara-
11 tion of rights it said that the accused should be furnished
12 with a copy of the indictment and by implication we had
13 the grand jury.

14 Under the Federal Constitution we had the words
15 whiche we have in Section 11, which specifically require
16 indictment by grand jury, and then we have now under rule
17 of the Court of Appeals Rule 708 which requires indictment
18 of a grand jury in capital or other infamous crimes,
19 and also 709, which permits the accused to waive, so I
20 think where we have changed Article XXI of the Declaration
21 of Rights, and where we want to guarantee this right in capital

1 or otherwise infamous cases, we should have it specifically
2 provided either in the declaration of rights or in our
3 judiciary article.

4 That is all I have to say for that, and there
5 has been no amendments offered.

6 I do not assume, or I assume that there is no objec-
7 tion to that being in our Constitution.

8 DELEGATE HENDERSON: May I ask a question?

9 DELEGATE JAMES: Will Delegate Weidemeyer yield
10 to a question?

11 DELEGATE WEIDEMEYER: Yes.

12 DELEGATE HENDERSON: Since Section 11, I understood
13 you to say, is not in our present Constitution, and since
14 there is a regular procedure whereby most of the cases
15 come up on information and not by indictment, would
16 there be any intention here to change that present practice
17 which has worked so well?

18 DELEGATE WEIDEMEYER: No, I do not think so because
19 this follows the wording of the Federal Constitution,
20 no person shall be held to answer for a capital
21 or otherwise infamous crime, unless on presentment or
indictment of a grand jury, except in cases arising

1 in the land or naval forces or in the militia when
2 in actual service in time of war, or public danger.

3 DELEGATE HENDERSON: This is limited then to capital
4 cases, is it?

5 DELEGATE WEIDEMEYER: This is capital or otherwise
6 infamous crime. On some of the minor things they come up
7 on presentment.

8 DELEGATE JAMES: A point of inquiry from the
9 Chair.

10 Isn't this interpreted in Federal law as
11 requiring a jury trial in these important cases?

12 DELEGATE WEIDEMEYER: No. This only pertains to
13 grand jury and not to the trial jury.

14 DELEGATE JAMES: I see.

15 DELEGATE WEIDEMEYER: For those of you who
16 might not understand, before a man is brought to trial
17 before what is known as the petty jury, the trial jury
18 on a capital or infamous case, he must be indicted by the
19 grand jury and the grand jury has a chance to go
20 over it and review it with the State's Attorneys, the
21 facts they have at hand to determine whether or not

1 at first hand there is ample evidence to take before
2 a jury.

3 DELEGATE JAMES: Delegate Cardin, for what purpose
4 does Delegate Cardin rise?

5 DELEGATE CARDIN: I would like to ask a question
6 of Delegate Weidemeyer.

7 DELEGATES JAMES: Do you yield?

8 DELEGATE WEIDEMEYER: Yes.

9 DELEGATE CARDIN: In Suffrage and Elections,
10 when we came across the phrase "infamous crime," we felt
11 the word infamous is one no longer in use by the general
12 public and we suggested changing it to "serious crime."
13 Is this the type of crime which you had in mind?

14 DELEGATE WEIDEMEYER: Infamous is a serious
15 crime and I think our legislature now is in the process
16 of redefining the statement between felonies and misdemeanors
17 and in some instances probably you have what we would call
18 an infamous crime that is now a misdemeanor but I would
19 imagine they will get that thing straightened out, but
20 "infamous," to my way of knowing, is a more or less serious,
21 very serious offense.

1 DELEGATE CARDIN: Would it Be in order to suggest
2 that if there is no objection that the committee on
3 Style and Drafting consider the sameterminology?

4 DELEGATE WEIDEMEYER: I would not agree to that.
5 I think "infamous" has its legal significance and we
6 ought nto tamper around with that.

7 DELEGATE JAMES: Delegate Byrnes, for what purpose
8 do you rise?

9 DELEGATE BYRNES: Just to ask a question, if I
10 may.

11 DELEGATE JAMES: Will the Delegate yield?

12 DELEGATE WEIDEMEYER: If I may.

13 DELEGATE BYRNES: Did I understand you to say
14 that the term "infamous" may include misdemeanors?

15 DELEGATE WEIDEMEYER: I said, now, that what I
16 said was my own personal opinion, that some of our crimes
17 in our criminal code are categorized as misdemeanors, and I
18 personally would consider them in the more serious
19 categories. What the legislature will do in redefining
20 them, I do not know, but to my mind, infamous imports the
21 rather more serious crime.

1 DELEGATE BYRNES: The reason I asked, I am informed
2 that the Baltimore County practice is simply to take
3 to the grand jury felonies. Anything that is not a felony--
4 put it this way -- if there was -- somewhere in the law
5 we found that something was an infamous crime, not a felony,
6 Baltimore County's practice to that extent would be
7 unconstitutional.

8 DELEGATE WEIDEMEYER: Let me clear this up.
9 In capital cases a man would have to go through the process
10 of indictment, unless he waived; in what would be known
11 as more serious or infamous crime, I think the the
12 legislature will define them in accordance with infamous crimes
13 so that you will know which crimes by statutes come under
14 this constitutional provision.

15 DELEGATE JAMES: Are you sure he can waive under
16 the law?

17 DELEGATE WEIDEMEYER: Yes, he can.

18 DELEGATE JAMES: Are there federal decisions which
19 say he cannot waive?

20 DELEGATE WEIDEMEYER: I am not talking about
21 federal, but Maryland.

1 DELEGATE JAMES: The Court of Appeals of Maryland
2 has said he may waive and other decisions say he cannot.

3 DELEGATE WEIDEMEYER: Under Maryland Rule 708 in
4 those cases he must be indicted.

5 A person charged with a felony must be prosecuted
6 by a grand jury, under present Maryland rule, but under
7 Maryland Rule 709, that defendant also may waive the
8 indictment of a grand jury.

9 As it is, if we do not put this in, we will only
10 be covered by Maryland rules.

11 We felt that rules could be changed and statutes
12 can be changed, but this is fundamental in our criminal
13 jurisprudence and we felt should be placed in the
14 Constitution.

15 DELEGATE JAMES: For what purpose does Delegate
16 Byrnes rise?

17 DELEGATE BYRNES: A further question.

18 DELEGATE JAMES: Does the Delegate yield?

19 DELEGATE WEIDEMEYER: Yes.

20 DELEGATE BYRNES: Do I understand this also
21 is in conflict with Maryland rules, to the extent

1 that it does not permit the waiver?

2 DELEGATE WEIDEMEYER: No, this does not prevent
3 them from waiving.

4 You can waive a lot of rights that the law
5 says you are entitled to.

6 You have a right to be tried. You have the
7 right to be tried by a fair and impartial jury, but
8 defendants after defendants waive that right and are tried
9 by the Court.

10 It does not mean that you have, it has to go on.
11 It means that you have the right to have it if you want
12 it.

13 DELEGATE JAMES: Delegate Byrnes.

14 DELEGATE BYRNES: I respectfully suggest that what
15 it says is that no person shall be held. This does not
16 say every person shall have the right. May I ask another
17 question?

18 DELEGATE JAMES: Does the delegate yield?

19 DELEGATE WEIDEMEYER: Yes.

20 DELEGATE BYRNES: Would you object to the
21 substitution of the word "felony" for "infamous" if I think

1 this will probably bring it into conformity with
2 the practices in the state and also I think recognize our
3 commission on revision of criminal laws work.

4 DELEGATE WEIDEMEYER: Our committee--

5 DELEGATE JAMES: Delegate Weidemeyer has no
6 authority to change the committee report.

7 DELEGATE WEIDEMEYER: Our committee considered
8 that. We had testimony before us, and considered it, and
9 as I recall States Attorney Moylan was down, and my
10 recollection is that he said that this would work out
11 all right.

12 DELEGATE JAMES: Delegate Marion, do you wish to
13 ask a question?

14 DELEGATE MARION: Yes.

15 DELEGATE JAMES: Delegate Weidemeyer, do you
16 yield?

17 DELEGATE WEIDEMEYER: Yes.

18 DELEGATE MARION: Delegate Weidemeyer searched
19 the committee's memoranda for some explanation of the
20 need for the exceptions which are spelled out in lines 47,
21 48, 49 relating to cases arising in the land or naval forces

1 and the militia.

2 Could you give me some reason why there is any need
3 for such an exception in the Constitution?

4 DELEGATE WEIDEMEYER: Well, our forefathers, when
5 they drew the Constitution, and I am telling you this is
6 in the Federal Constitution, it is the exact wording of
7 the Federal Constitution, and it has held good since
8 the adoption of it, and I have heard no clamor for change,
9 and ordinarily when a man is in active military service,
10 he is subject to the jurisdiction of the military.

11 DELEGATE JAMES: Delegate Marion.

12 DELEGATE MARION: Is it not true, though, that the
13 U. S. has an army and has a navy and has by act of Congress
14 a system of military courts in which those offenders are
15 punished, and we have made no such provision for that as
16 the judicial system of this state?

17 DELEGATE WEIDEMEYER: If those cases arise under
18 the federal jurisdiction or the military forces, of course
19 they would be prosecuted under those federal laws, so
20 we can make an exception without violating anything.

21 DELEGATE JAMES: For what purpose does Delegate

1 Kiefer rise?

2 DELEGATE KIEFER: For a point of clarification.

3 Our research indicated that there are in Maryland
4 while the -- this language exactly parallels the Fifth
5 Amendment language and while Maryland cases defining infamous
6 crimes are not exactly the same as federal crimes, as
7 far as we have been able to determine, there are no felonies
8 in Maryland that are not infamous crimes and there are
9 serious other misdemeanors which have been classified
10 as infamous crimes. Therefore, this is a little bit more
11 broad in granting a right.

12 On the other hand, under the federal rules and
13 under Maryland rules, there is always a right of waiver,
14 so that we are not doing anything but giving a person
15 a right to be indicted by a grand jury in situations that
16 parallel, we think, what the common law was, but which
17 we felt ought to be put in now because the common law may
18 not be as clearly stated because of what we are doing in the
19 way of eliminating some of the present declaration of
20 rights.

21 DELEGATE JAMES: Delegate Marion?

1 DELEGATE MARION: Mr. Chairman, if that was in
2 response to my question -- I think it was --

3 DELEGATE JAMES: That was a supplementary answer.

4 DELEGATE MARION: The question I am still seeking
5 an answer to, I appreciate the fact that this is language
6 in the Federal Constitution, but if it will have no
7 application, no application whatsoever to the state or cases
8 arising in the state, if we do not have an army or navy
9 why is there need just for the sake of carrying over the
10 language as it appears in the Federal Constitution to include
11 this language in the Maryland Constitution?

12 DELEGATE WEIDEMEYER: Those cases you are worried
13 about I think come under the federal jurisdiction of the
14 military.

15 DELEGATE JAMES: Does the state have military forces

16 DELEGATE WEIDEMEYER: In the Army or the Navy
17 they have military courts and certain offenses which are
18 offenses both under the federal law, under the Maryland
19 law or the state law can be prosecuted in the militayr courts
20 martial, by military court martial.

21 They are in the military.

1 DELEGATE JAMES: Delegate Hardwicke,
2 do you wish to ask a question of Delegate Weidemeyer?

3 DELEGATE HARDWICKE. Yes.

4 Delegate Weidemeyer, we passed S&E-2 last
5 evening, the last sentence of which provides, only a
6 member of the militia may be subject to a military trial,
7 and then only while in actual service.

8 Now if we adopt Section 11, do you propose
9 that we amend S&E-2 to conform or would you propose that
10 we amend Section 11 to conform to S&E-2 or would it be
11 exactly the same thing?

12 DELEGATE WEIDEMEYER: No. I do not think we need
13 it. I think they agree. I might say, in the committee,
14 in passing this, it clearly intended that our grand jury
15 procedures as we now know them would not be disturbed,
16 and would be placed in the Constitution, especially when
17 we are not adopting the language of Article XXI,
18 Declaration of Rights, which I said by implication gave the
19 right to the grand jury and we have always had it so this
20 would continue that right and guarantee that right of grand
21 jury in certain instances.

1 DELEGATE JAMES: Delegate Bothe.

2 DELEGATE BOTHE: Delegate Weidemeyer, did the
3 Committee on Personal Rights hear any evidence or find
4 any evidence that there was a need to constitutionize
5 the grand jury system in the state?

6 DELEGATE WEIDEMEYER: Well, I do not know
7 that we discussed -- well, we did consider that too and
8 you were there at the hearings and certainly if you are
9 removing one provision of the Declaration of Rights which
10 gives the defendant the right, by implication, and our pro-
11 cedure has been there, by removing that provision in Article
12 XXI, we intended that that right to the indictment by grand
13 jury in certain cases be continued and be guaranteed.

14 That is all we intended, that it be not taken
15 away. We had knowledge of the fact that the Maryland,
16 the rules of the Maryland Court of Appeals, 708 and 709 had
17 been passed dealing with this subject, but we know that the
18 legislature can give one day and take away the next.

19 We wanted it Constitutionally guaranteed.

20 DELEGATE BOTHE: Delegate Weidemeyer,
21 I understood you to say that we had taken away

1 a right to grand jury indictment.

2 DELEGATE WEIDEMEYER: I did not say that. I
3 said that we do not have the provision of Article 21 of the
4 declaration of rights. I said that in our previous
5 Constitution the only thing that we had was by implication,
6 coming out of Article XXI, which said that the Defendant
7 should be entitled to be presented with a copy of the
8 indictment, and by implication, that meant the indictment
9 of the grand jury, and it also can be interpreted to
10 mean a copy of the presentment.

11 DELEGATE BOTHE: Substitution for which we
12 made provision that the defendant was not entitled to
13 a copy of the charge.

14 DELEGATE WEIDEMEYER: Yes, and in that we have
15 by implication, too. But we did not want to do away
16 with the grand jury indictment, by getting a copy of the
17 charge might mean just the state's attorney's charge.
18 We did not want it that way. We wanted the right of
19 grand jury indictment in certain cases guaranteed.

20 THE CHAIRMAN: Delegate Bothe.

21 DELEGATE BOTHE: Again I would ask an answer

1 to a question originally asked and that is whether there
2 was any evidence before the Personal Rights Committee
3 which would justify the necessity for including the right
4 to grand jury indictment in the Constitution.

5 DELEGATE WEIDEMEYER: Yes, there was, and I
6 think that was on one of the days when you were out on
7 some due process work or something, and we had State's
8 Attorney Charles Moylan and we had him there at length
9 going over this matter.

10 THE CHAIRMAN: Delegate Bothe.

11 DELEGATE BOTHE: You are aware, I trust, that
12 a large number of petty offenders who may or may not
13 be charged with infamous crimes, since that word is
14 uncertain, are proceeded against by waive of information in
15 the state?

16 DELEGATE WEIDEMEYER: The minor ones are preceded
17 by presentment and even some of the major crimes are preceded
18 by presentment, especially when they waive them.

19 DELEGATE BOTHE: Have you any authority for your
20 statement that the rights, if set out as proposed in
21 Section 11, could be waived by a person accused of
an infamous crime?

1 DELEGATE WEIDEMEYER: Yes, under Maryland Rule
2 709 the waiver can be had, and I think the procedure here
3 if without any special statute has been that they could
4 waive if they wanted to and they could waive under this.
5 They could waive jury trial, waive a lot of the rights
6 that they have.

7 THE CHAIRMAN: Delegate Bothe.

8 DELEGATE BOTHE: Have you any authority in support
9 of that contention?

10 Some rights are waivable, others are not.

11 DELEGATE WEIDEMEYER: There are a lot of rights
12 that we can waive in this world.

13 DELEGATE BOTHE: That is your reply?

14 DELEGATE WEIDEMEYER: I could waive the right
15 to talk back to my wife and let her go off in the
16 wrong direction but sometimes I talk back to her .

17 THE CHAIRMAN: Delegate E. J. Clarke.

18 DELEGATE E. J. CLARKE: I suggest the absence
19 of a quorum..

20 THE CHAIRMAN: The clerk will ring the quorum
21 bell.

1 Are there any further questions of the
2 committee spokesman?

3 The Chair hears none.

4 DELEGATE WEIDEMEYER. In regard to Section 13,
5 which is imprisonment for debt, Section 13 of the
6 recommendation is identical language with Article III,
7 section 38 of our present Constitution. That goes back
8 a long way.

9 England under the old law there could imprison
10 people for debt.

11 THE CHAIRMAN: Will you pause just a moment?

12 The absence of a quorum having been suggested,
13 roll call.

14 (Whereupon, a roll call was taken)

15 THE CHAIRMAN: Has every delegate answered roll
16 call?

17 The Clerk will record the roll call.

18 The committee will continue in session, there
19 being a quorum present.

20 DELEGATE WEIDEMEYER: As you recall the colony
21 of Georgia was founded by debtors and it has been carried

1 in our Constitution since 1851 as a prohibition for
2 putting people in jail or confinement because of death.

3 In 1950 and 1962, there were amendments placed
4 on that which provided, and it now reads, no person shall
5 be imprisoned for debt, but a valid decree of a court of
6 competent jurisdiction or agreement approved by the decree
7 of that court for support of a wife or dependent children
8 or for support of illegitimate child or children or for
9 alimony shall not constitute debt within the meaning
10 of this section.

11 That was on the theory that if they did not
12 comply with a court order to support minor children and wives
13 that there they were not strictly speaking being confined
14 for a debt.

15 They were being confined for a contempt of the
16 court and for a failure to abide by a court order to comply
17 with their duty to society, and this provision
18 that we have given you is the identical language of Article
19 III, Section 38 of our present Constitution, and we feel
20 should be carried over.

21 Now, there have been decisions of the Maryland

1 Court of Appeals that held that without legislation or
2 without constitutional provision, that they could not
3 imprison persons for contempt of court, for failure to
4 pay alimony in support of children.

5 For that reason, I imagine that this provision
6 was presented to the people in 1950 and again in 1962 and
7 it is of rather recent origin and has been recently approved
8 by the people.

9 Now if you would delete this, if you would want to
10 delete this, then you would have to make certain that
11 transitory provisions were written in which gave the right
12 to imprison for failure to comply, a man's failure to comply
13 with his duty to society, namely, to support his wife and
14 children.

15 Are there any questions on that?

16 THE CHAIRMAN: Any questions?

17 Delegate Moser.

18 DELEGATE MOSER: Delegate Weidemeyer, did
19 you all consider the problem of imprisonment for non-
20 support of an indigent parent?

21 I think that that is an imprisonable offense.

1 DELEGATE WEIDEMEYER: No, we did not.

2 THE CHAIRMAN: Any other questions?

3 The Chair hears none.

4 Thank you, Delegate Weidemeyer.

5 Section 11 is open for amendment.

6 Are there any amendemtns?

7 The Chair has no amendments.

8 Delegate Byrnes.

9 DELEGATE BYRNES: Mr. Chairman, there is one
10 being prepared by Delegate Marion and myself, et al.

11 In fact, I think there are two.

12 THE CHAIRMAN: What is the state of them, do
13 you know?

14 DELEGATE BYRNES: They are now being prepared,
15 physically.

16 THE CHAIRMAN: They have been prepared and being
17 printed or just being written?

18 DELEGATE BYRNES: They jsut were presented to
19 Mr. Benson.

20 THE CHAIRMAN: Delegate Carson.

21 DELEGATE CARSON: Mr. Chairman, Delegate

1 Hardwicke and I have one, which was placed into the printing
2 room I believe ahead of the other one and their estimate
3 of time is about 15 minutes.

4 THE CHAIRMAN: Any other amendments?

5 Delegate Scanlan.

6 DELEGATE SCANLAN: Could I ask Delegate Carson
7 just the import of his amendment?

8 Is it possible if it was a short one maybe
9 we could suspend the rules and vote on it before it reaches
10 us?

11 THE CHAIRMAN: Delegate Carson, can you state
12 what the amendment is?

13 DELEGATE CARSON: I think so, Delegate Scanlan.
14 Our amendment will have the effect of taking out the words,
15 presentment or, because we believe they are unnecessary,
16 on line 46, and substituting for lines 47, 48 and 49 the
17 words, except in cases arising in the militia
18 while in actual service.

19 That would make that latter language the same
20 as -we have already voted on with regard to GP -- I believe
21 No. 4, with regard to the militia.

1 THE CHAIRMAN: Delegate Carson, I am sorry
2 the Chair does not follow the amendment.

3 Will you give it to me again?

4 You would strike what in line 46?

5 DELEGATE CARSON: In line 46, strike the words
6 "presentment or" then, in line 47 through 49, strike all
7 the language on those lines and add this language:
8 "except in cases arising in the militia while in actual
9 service."

10 THE CHAIRMAN: While and not when?

11 DELEGATE CARSON: Yes, sir. The "while" was
12 used by the Committee on Style and is the same as GP-
13 3 or 4, whatever it is, with regard to militia.

14 THE HCAIRMAN: For what purpose does Delegate Kiefer
15 rise?

16 DELEGATE KIEFER: Mr. Chairman, we had in mind
17 a similar amendment.

18 The language may be slightly different. Let
19 me give it to you.

20 It is a matter of styling. This was prepared
21 prior to the provisions of the General Provisions

1 Committee on this subject but crossing out the three
2 lines, 47, 48, 49 and saying "except for a member of the
3 militia for offenses committed while in actual service."

4 This follows, I believe.

5 THE CHAIRMAN: I think you can use the language
6 of Delegate Carson with less change here.

7 For what purpose does Delegate Henderson rise?

8 DELEGATE HENDERSON: Mr. Chairman, I had an
9 amendment joined in by several other delegates, a very simple
10 one and that is to strike out this section as proposed
11 and I would like to have consideration of that.

12 My reason is that, one reason I am not prepared
13 sooner si because I am disturbed at the adoption of language
14 right out of the federal Constitution and putting an
15 entirely novel concept into our Constitution, something that
16 was not there at all.

17 The present Constitution speaks of an indictment
18 or charge, which is a very different thing.

19 This requires the grand jury action in every case,
20 and many of the cases as we know are now tried on informa-
21 tion. Therefore, I would like to have my amendment considered

1 sometime, or maybe first, if possible.

2 THE CHAIRMAN: Very well, jsut a moment.

3 Delegate Carson, would you take the copy of
4 R&P-2, Section 11 and follow the Chair and let me
5 understand whether this would be your amendment?

6 In line 46 Strike the words "presentment or;"
7 in line 47, strike the words,"in the land or naval"
8 in line 48, strike the words "forces or"; change the word
9 "when" to "while," and in line 49, strike "in time of war
10 or public danger."

11 DELEGATE CARSON: That is correct, Mr. Chairman.
12 That is our amendment.

13 THE CHAIRMAN: Delegate Byrnes, what is the
14 import of your amendment?

15 DELEGATE BYRNES: That is why I arose, sir.

16 On line 45, we would strike out, "capital or
17 otherwise infamous crime," and substitute in lieu thereof,
18 "felony," and we would delete all of lines 47, 48, and
19 49 and substitute nothing for it.

20 THE CHAIRMAN: The Chair thinks that the
21 better procedure to follow and the quicker would be

1 to consider first if the committee is willing to consider
2 it without having the printed amendment, the amendment
3 proposed by Delegate Henderson. This would enable,
4 regardless of which way the vote went on that, give us
5 time to have the other two amendments in printed form.

6 It is easy enough for us to comprehend the effect
7 of Delegate Henderson's amendment.

8 The Chair would therefore be disposed to ask
9 whether there is any objection to proceeding with the
10 consideration of an amendment to strike all of Section 11,
11 which would be all of lines 41 to 49, inclusive, on page 3,
12 with the understanding the printed amendment will be on your
13 desk very shortly.

14 For what purpose does Delegate Sherbow rise?

15 DELEGATE SHERBOW: Before I would state or not
16 state an objection, may I ask Delegate Henderson a question
17 on that?

18 THE CHAIRMAN: Very well.

19 DELEGATE HENDERSON: I yield.

20 THE CHAIRMAN: The only point here, Delegate
21 Sherbow, is whether we can proceed without waiting for

1 the printed amendment.

2 DELEGATE SHERBOW: My question goes to the heart,
3 and that is this: Would not your amendment strike out the
4 whole grand jury system in Maryland?

5 THE CHAIRMAN: Delegate Henderson.

6 DELEGATE HENDERSON: I think not, because as I
7 understand it there is no provision in the Maryland Consti-
8 tution which even requires a grand jury.

9 It simply says in one article that it may be on
10 indictment or charge.

11 He is entitled to a copy of the indictment or charge.
12 It is entirely a matter of statutory law and the rules of
13 the court as I understand it under the present system and that
14 would not be changed by the failure to adopt this
15 provision.

16 THE CHAIRMAN: Delegate Sherbow, the Chair suggests
17 what we are now doing is debating the question. The only
18 matter at the moment is whether there is any objection to
19 proceeding with the debate without having the printed
20 amendment before you.

21 The Chair hears none.

1 This will be Amendment 17, proposed by
2 Delegate Henderson.

3 The amendment is to strike all of Section 11,
4 comprising lines 41 to 49, inclusive, on page 3 of the
5 Committee Recommendation R&P-2.

6 Is there a second?

7 DELEGATE CASE: Seconded.

8 THE CHAIRMAN: The amendment having been
9 seconded, the Chair recognizes Delegate Henderson to
10 speak to the amendment.

11 DELEGATE HENDERSON: Mr. Chairman, fellow dele-
12 gates, I am not proposing any change in the existing law,
13 which I think works very well, and although it is set
14 up by statute and by rule of court. The practice is,
15 as I understand it, that most serious crimes are taken
16 before the grant jury, but that since many people are
17 held in jail, they are given an option to stand trial and
18 not wait for the action of the grand jury on an information
19 filed by the State's Attorney, and I do not know what
20 proportion of crimes in Maryland, even the most serious
21 crimes, are tried under taht system, but I believe it is

1 a very very large percentage, and it is a very useful
2 thing, because as I say, people can get to trial quicker,
3 rather than stay in jail, and it avoids the great
4 load and burden which would otherwise be placed upon the
5 grand jury.

6 I want to preserve that system. I want that
7 perfectly clear, with such improvement as may be made from
8 time to time, but by adopting this language, which is
9 lifted out of the federal Constitution, applicable to
10 federal cases, and not to state cases, because this is one
11 part of the federal Constitution which has not been held
12 applicable to the states, that by lifting that, you may
13 put or lift some of the gloss that has been put on that,
14 namely, that the accused has a right to indictment which
15 he cannot waive, just as he is not permitted, I believe,
16 to waive jury cases in the federal courts.

17 That system, which is based on relatively a
18 small number of specialized statutory crimes, such as the
19 Mann Act, for example, and some others, and does not
20 cover the whole gamut of common law crimes which exist
21 at the state level, has been set up on a very different

1 basis and I fear that by adopting the federal language
2 we may in fact destroy our present system which has been
3 set up under the statutes and rules of the court, and to
4 freeze the thing at that level.

5 THE CHAIRMAN: Are there any questions of the
6 sponsor of the amendment?

7 Does any person desire to speak in opposition?

8 DELEGATE CARSON: Mr. Chairman, ladies and
9 gentlemen, the language which the majority proposes and
10 which our amendment would have the benefit of keeping
11 largely keeps it a right of the individual to be charged
12 by a grand jury in cases of capital or otherwise infamous
13 crimes.

14 This is exactly the language of the U. S. Fifth
15 Amendment.

16 Under the federal system, an accused may waive
17 the trial by jury. He may waive his right to be
18 presented by indictment if he so desires, except in
19 cases of capital crime, so these rights may be waived and
20 the federal cases are very clear to that effect.

21 I think it is desirable that in cases that are

1 very serious, an individual not be charged merely by a
2 prosecutor signing a piece of paper. I think it is essential
3 in serious crime that a grand jury sit down and decide
4 that a charge ought to be made.

5 Now this would not be necessary in minor crimes.

6 I do think it is important enough to put
7 in our constitution as the founding fathers thought it
8 important enough or the amendment thereto shortly thereafter
9 in the Federal Bill of Rights and I suggest that you
10 vote in favor of this provision regardless of the record
11 of destroying the rest of these provisions, which I voted
12 for also.

1 THE CHAIRMAN: Before continuing with debate,
2 the Chair wants to make an announcement and ask the Clerk
3 to ring the quorum bell.

4 We are in a situation where, because of the pro-
5 tracted sessions of the Convention, the Committee on
6 Style, Drafting and Arrangement, and the Committee
7 Working on the transitional provisions are unable to meet for
8 sufficient lengths of time to progress and have available
9 reports for the consideration of the Convention.

10 As indicated earlier in the week, it is imperative
11 that we have a period of at least two, and preferably three
12 days to enable these committees to complete their work and
13 present it to the Convention.

14 If we continue the announced schedule of sessions
15 of the Convention for today, tomorrow and Saturday, and
16 succeed in completing consideration of every item on the
17 agenda, and then permit these two committees to go to work
18 on their various matters we would then be in a position
19 to present their written reports to the delegates and
20 allow the delegates time enough to study them and begin debate
21 next week.

Consideration has been given to the possibility

1 of continuing as earlier announced, and then recessing next
2 week, except for those two committees, having their reports
3 completed and sent to delegates by mail, so that the dele-
4 gates could then be prepared to debate those reports on
5 the very first day they resumed sessions.

6 With the mail as it is at this time of the year,
7 there is no certainty that the delegates would receive the
8 reports in time.

9 Accordingly, it is planned to continue the debate
10 on R&P-2 this afternoon until it is concluded, hopefully
11 in a very brief remaining period of time, and not have a ses-
12 sion of the Convention this evening, or of the Committee
13 of the Whole or the Convention this evening, allowing
14 this evening for meeting of the Committee on Style and of
15 the committee working on the transitional provisions.

16 We will continue tomorrow with the session of
17 the Convention as planned, and wherever we may be at late
18 afternoon or early evening tomorrow, adjourn and not have a
19 session tomorrow evening, not have a session of the
20 Convention on Saturday, not have a session of the Conven-
21 tion on Monday; request all delegates serving on the two

1 committees which I mentioned to remain, notwithstanding the
2 fact that the Convention is not in session tomorrow evening,
3 Saturday and Monday, and be in a position to present
4 to the Convention on Tuesday reports which they will have
5 been able to complete by that time.

6 Following this procedure it is hoped that we
7 could get at least one of the reports of the Committee on
8 Style in your hands before you leave tomorrow so that you
9 could have it over the weekend and be prepared to debate
10 it when the Convention resumes its session on Tuesday.

11 It is contemplated that the Convention would resume
12 on Tuesday at 2 o'clock and have a session Tuesday after-
13 noon, Tuesday evening; Wednesday morning, afternoon and
14 evening; Thursday morning and afternoon, but not evening,
15 so that the Convention would then recess or adjourn on
16 Thursday of next week until after Christmas.

17 In order to accomplish this it is imperative
18 that we complete R&P-2 this evening. We don't want to break
19 for dinner and come back, and certainly we don't want to
20 delay dinner to an unreasonable hour.

21 I would therefore urge that the debate on the

1 remaining provisions of R&P-2 be kept to a minimum; that we
2 act promptly; that delegates remain in the chamber so that
3 we can vote quickly; and then adjourn and not return
4 this evening -- except for the two committees mentioned.

5 Are there any questions?

6 Delegate Koss.

7 DELEGATE KOSS: Mr. Chairman, isn't it true that
8 in relation to the sections now under consideration we have
9 to go back to .1 and that there is a minority report on
10 originally part of R&P-1 that we still have to consider as
11 part of R&P-2?

12 THE CHAIRMAN: I don't believe it would be pos-
13 sible to conclude consideration of R&P -- the portion of
14 R&P-2 that was to have been R&P-1 this evening;
15 and that would have to, under this scheduling, go over
16 until tomorrow morning. We could do it only by coming back
17 this evening. This means that we would have to move pretty
18 briskly this evening and tomorrow morning to handle that
19 schedule, dispose of the other recommendations of the Gene-
20 ral Provisions Committee.

21 Are there any other questions?

1 (There was no response.)

2 THE CHAIRMAN: Very well. We will resume de-
3 bate on Amendment 17.

4 Delegate Scanlan.

5 DELEGATE SCANLAN: I want to briefly support
6 the amendment. Judge Henderson stated the case in very com-
7 pelling fashion. I think the Convention today has shown
8 wisdom in eliminating from the Constitution provisions
9 that are either archaic, restrictive, or unnecessary.
10 Conversely, I see no reason to add to the Constitution a
11 provision which is unnecessary, one that has never re-
12 flected the system observed in Maryland, a system, as
13 Judge Henderson indicated, that has worked very well, and
14 a system which is in no danger of being overturned by
15 the General Assembly.

16 I urge that you support his amendment.

17 THE CHAIRMAN: Delegate Sherbow.

18 DELEGATE SHERBOW: Mr. Chairman, ladies and
19 gentlemen: I consider Judge Henderson's purpose highly
20 laudable, but I tell you, I am opposed to the
21 amendment for these reasons only:

1 I think we have come too fast. I have been
2 running down the law in a time when I should have been
3 listening to the Chairman telling us when and where we
4 go in the next few days, and this is what I find:

5 The Constitution as we have at the present time
6 has these references to the indictment, Article IV, section
7 13: All indictments shall conclude against the peace,
8 government, and dignity of the State, which implicitly
9 means that you can't have an indictment if you don't have
10 a grand jury.

11 Now, if you bodily take out this whole section
12 referring to indictments, you then must fall back on the
13 rule of the court, and the rule of court, 7.08 and 7.09
14 quite clearly tell you what you can do with respect to indict-
15 ments and to information; but if the time should arise
16 when the judges of the Court of Appeals decide, as
17 they would then have the power to decide, that there need not
18 be indictments but that we could allow everything, including
19 the kind of situation that would develop through some
20 form of information, I think through the back door we have
21 destroyed the grant jury system.

1 I don't know that exactly what I am saying to
2 you is all that is involved, but I am completely frustrated
3 that we do not have the kind of research material in connec-
4 tion with this that would let us know that if we do
5 take this section out, we are or are not destroying
6 the grand jury system; and if we are destroying the grand
7 jury system, I am opposed to the amendment. But if we could
8 have the kind of assurances that we ought to have, that
9 all we are doing is simplifying the picture as it is going
10 to be, then I think we can take a second look. But I would
11 not be in favor of this amendment at this time, under
12 these circumstances, until we have got a lot more of the law,
13 the background, and the possibilities that may result from
14 stripping the Constitution of all reference to indictments.

15 THE CHAIRMAN: Does any other delegate desire
16 to speak in favor of the amendment?

17 Are you ready for the question?

18 The Clerk will ring the quorum bell.

19 The question arises on the adoption of Amend-
20 ment No. 17. Amendment No. 17 is to delete all of section
21 11 on page 3. A vote Aye is a vote in favor of the

1 amendment to delete; a vote No is a vote against.

2 Cast your votes.

3 Has every delegate voted? Does any delegate
4 desire to change his vote?

5 The Clerk will record the vote.

6 There being 49 votes in the affirmative and 60
7 in the negative, the motion is lost. The amendment is
8 rejected_

9 Is there any objection to considering the
10 amendment of section 11 not yet printed, with the under-
11 standing that it will be available very shortly, proposed
12 by Delegate Carson?

13 The amendment would strike the word "presentment"
14 in line 46; the words "in the land or naval forces or" in
15 lines 47 and 48; change the word "when" to the word "while"
16 in line 48; and strike, in line 49, the words "in time of
17 war or public danger".

18 Is there any objection?

19 Delegate Kiefer.

20 DELEGATE KIEFER: Mr. Chairman, I do not
21 believe there is any objection as far as the committee is

1 concerned. The language does not do anything --

2 THE CHAIRMAN: Just a second.

3 This is just an objection to considering.

4 Is there any objection to considering?

5 DELEGATE KIEFER: No.

6 THE CHAIRMAN: Delegate Sherbow?

7 (There was no response.)

8 THE CHAIRMAN: Delegate Marvin Smith.

9 DELEGATE M. SMITH: May I suggest to you,
10 Mr. Chairman, that you read that the way it will be?

11 THE CHAIRMAN: Yes, I will.

12 If the amendment is adopted, the section would read
13 as follows:

14 "No person shall be held to answer for a capital
15 or otherwise infamous crime unless on indictment of a grand
16 jury, except in cases arising in the militia while in
17 actual service."

18 Is there any objection to considering the
19 amendment?

20 The Chair hears none.

21

1 The amendment is proposed by Delegate Carson.
2 It will be No. 18.

3 Is it seconded?

4 DELEGATE BENNETT: I second.

5 THE CHAIRMAN: The amendment having been seconded
6 the Chair recognizes Delegate Carson to speak to the
7 amendment.

8 DELEGATE CARSON: Mr. Chairman, this was merely a
9 clarifying amendment. I don't think any change in substance
10 has been made.

11 The words "presentment or" are unnecessary.
12 They mean the same as indictment. Taking out the words "the
13 land or naval forces" certainly doesn't affect anything.
14 The only possible military trials in this State would
15 arise in the militia when it was in actual service, and
16 these are the only changes made.

17 I think there is no change of substance, however.

18 The chairman of the committee, Mr. Kiefer,
19 has indicated that he has no objection to these amendments.
20 I think no further explanation is necessary.
21

1 THE CHAIRMAN: Delegate Weidemeyer.

2 DELEGATE WEIDEMEYER: I have no objection to
3 them, Mr. Chairman, I think they are clarifying.

4 THE CHAIRMAN: Any further discussion?

5 Delegate Marion.

6 DELEGATE MARION: Mr. Chairman, I wonder if
7 I could offer an amendment to the amendment.

8 THE CHAIRMAN: Can you make it as a suggestion
9 to Delegate Carson and see if he would accept it?

10 DELEGATE MARION: I just made it privately, and
11 I don't think he is willing to accept it.

12 THE CHAIRMAN: What is the amendment?

13 DELEGATE MARION: It would be to strike the word
14 "capital or otherwise infamous crime" and substitute in
15 lieu thereof the word "felony."

16 THE CHAIRMAN: Is there any objection to
17 considering the amendment to the amendment in the absence
18 of its having been printed?

19 The Chair suggests that it is one that can be
20 readily understood.

21 Delegate Carson, do you object?

1 DELEGATE CARSON: I do not object. Upon re-
2 consideration, I understand that Chairman Kiefer will agree
3 with this, and we will accept the amendment.

4 THE CHAIRMAN: Very well.

5 The amendment now is strike from line 45 the
6 words "capital or other infamous crime" -- is that correct,
7 Delegate Marion?

8 DELEGATE MARION: Yes, sir.

9 THE CHAIRMAN: And to insert in lieu thereof
10 the word "felony." Is that correct, Delegate Marion?

11 DELEGATE MARION: Yes.

12 THE CHAIRMAN: Amendment 18 as thus modified,
13 there being no objection, the effect of the amendment would
14 be that section 11 would read: "No person shall be held to
15 answer for a felony unless on indictment of a grand jury,
16 except in cases arising in the militia while in actual
17 service."

18 Are you ready for the question?

19 The question arises on the adoption of Amendment
20 18. A vote Aye is a vote in favor of the amendment; a
21 vote No is a vote against.

1 Cast your votes.

2 Has every delegate voted?

3 Does any delegate desire to change his vote?

4 The Clerk will record the vote.

5 There being 102 votes in the affirmative and
6 2 in the negative, the motion is carried. The amendment
7 is adopted.

8 Delegate Byrnes, do you still desire to offer
9 your amendment, in light of the action just taken?

10 DELEGATE BYRNES: No, sir.

11 THE CHAIRMAN: Thank you.

12 Any further amendments to section 11 as amended?

13 Delegate Macdonald.

14 DELEGATE MACDONALD: Mr. Chairman, I have a short
15 amendment to section 7.

16 You may recall that we held this over.

17 THE CHAIRMAN: The Chair would prefer to go
18 right through and then come back. There are a number of
19 other sections that we have to pick up.

20 The next section is section 12. There are a
21 number of amendments to section 12.

1 Delegate Kiefer.

2 DELEGATE KIEFER: Mr. Chairman, in an effort to
3 speed this thing up, we have worked out an Amendment AN,
4 which I believe has been submitted to the various
5 authors of the other amendments, and I believe this is
6 acceptable to all people; and as far as I know, even Dele-
7 gate Scanlan is not going to oppose this.

8 THE CHAIRMAN: Does that mean that Amendment
9 AN is offered and Delegate Macdonald would not offer his
10 amendment B; that Delegate Child would not offer his
11 amendment C; that Delegate Scanlan would not offer his
12 Amendment T?

13 Is that correct, Delegate Scanlan, Delegate
14 Child, Delegate Macdonald?

15 DELEGATE CHILD: Yes.

16 DELEGATE MACDONALD: That is correct.

17 DELEGATE SCANLAN: Yes.

18 THE CHAIRMAN: Real progress.

19 The pages will please distribute Amendment AN.
20 This will be Amendment 19.

21 The Clerk will read the amendment.

1 MR. QUILLEN: Amendment No. 19 to Committ-e
2 Recommendation No. R&P-2, by Delegates Kiefer and
3 Willoner:

4 On page 4, Section 12, Right of Removal of
5 Criminal Cases, strike out all of lines 4 through 8, in-
6 clusive, and insert in lieu thereof the following:

7 "In cases punishable by death or life imprison-
8 ment after suggestion under oath in writing of either of the
9 parties that such party cannot have a fair and impartial
10 trial in the court where the case may be pending, that court
11 shall order the case removed to another county for trial.
12 All other criminal cases may be removed only as permitted
13 by the Court of Appeals by rule or the General Assembly
14 by law."

15 THE CHAIRMAN: The amendment has been submitted
16 by Delegate Kiefer. It is seconded by Delegate Willoner.

17 The Chair recognizes Delegate Kiefer to speak
18 to the amendment.

19 Delegate Kiefer.

20 DELEGATE KIEFER: Mr. Chairman, in an effort
21 to speed things up I was working on the next one, but

1 this is an amendment which will provide for a right of
2 removal in criminal cases where capital offenses or life
3 imprisonment are involved as a matter of right. It is
4 the practice now. It will also provide that in other
5 criminal cases there will be a removal only in accordance
6 with the rules of the Court or the General Assembly,
7 and I believe this is adequate and fair and proper. It
8 seems satisfactory to everybody.

9 THE CHAIRMAN: Any further discussion?

10 Delegate Marion.

11 DELEGATE MARION: A question of Delegate Kiefer.

12 THE CHAIRMAN: Do any delegates not have a copy
13 of the amendment?

14 Delegate Marion.

15 DELEGATE MARION: My question was directed to
16 Delegate Kiefer.

17 THE CHAIRMAN: State the question.

18 DELEGATE MARION: Is my understanding of this
19 ammendment correct: This gives the capital cases, either
20 the State or the Defendant the automatic right --

21 THE CHAIRMAN: Gives to who?

1 DELEGATE MARION: Either to the State or the
2 Defendant an automatic right of removal from the county
3 in which the prosecution is brought.

4 THE CHAIRMAN: I am not sure I understand what
5 you mean by "automatic right of removal." You mean
6 an absolute right, not a matter of privilege?

7 DELEGATE MARION: Yes.

8 THE CHAIRMAN: Delegate Kiefer.

9 DELEGATE KIEFER: Yes. This already exists now.

10 THE CHAIRMAN: Delegate Mudd, can you recall,
11 I have a hazy recollection that there was some provision
12 in the judicial article that a defendant was entitled
13 to be tried in the county where the offense was committed.
14 I may be wrong about it.

15 DELEGATE MUDD: I don't recollect any. I
16 will check.

17 THE CHAIRMAN: Very well.

18 Delegate Mason.

19 DELEGATE MASON: I have a question for Delegate
20 Kiefer.

21 THE CHAIRMAN: State the question.

1 DELEGATE MASON: I would like to know if the
2 sentence on line 12, where it says "All other criminal cases
3 may be removed only as permitted by the Court of Appeals by
4 rule or the General Assembly by law," I am wondering
5 whether that "only" precludes removal for a show of preju-
6 dice?

7 THE CHAIRMAN: Delegate Kiefer.

8 DELEGATE KIEFER: It means what it says, I am
9 afraid. It means that they could be removed only as set out
10 by rule or by law.

11 I would assume that in case of prejudice that
12 this would be valid.

13 Let me refer you to, or yield to Delegate Willoner,
14 who is more familiar with the specifics on this matter.

15 THE CHAIRMAN: Delegate Willoner.

16 DELEGATE WILLONER: It would provide --
17 it is unnecessary to provide for that, because that is part
18 of the due process concept in a fair trial.

19 THE CHAIRMAN: Delegate Mason, do you have
20 another question?

21 DELEGATE MASON: I wonder whether this is not in

1 conflict with that due process part of the Constitution, by
2 limiting removal only to cases permitted by the rule
3 of the General Assembly?

4 THE CHAIRMAN: Delegate Willoner.

5 DELEGATE WILLONER: Well, it is not
6 intended to be in conflict with that. I will put it that
7 way.

8 THE CHAIRMAN: Delegate Mason.

9 DELEGATE MASON: I have no further question
10 but it appears confusing.

11 THE CHAIRMAN: Any further questions?

12 Delegate Mudd, I think what the Chair was think-
13 ing of was an earlier draft of some predecessor to section
14 5 of R&P-1. There was in an earlier draft a provision
15 that the accused was entitled to trial by an impartial jury
16 in the county where the crime was perpetuated. It is not
17 there now.

18 Delegate Bamberger.

19 DELEGATE BAMBERGER: Mr. Chairman, I would suggest
20 the question Delegate Mason raised may have some validity, and
21 I would ask the proposers of this amendment if they

1 would agree to omit the last sentence. It is not neces-
2 sary. The Court of Appeals, under its rule making
3 power, and the General Assembly under its rule making
4 power for the Courts would always have that right.

5 I think we are stating something which is unneces-
6 sary in the Constitution, and if it raises a question
7 in the mind of Delegate Mason, I think it raises questions
8 that we ought not expose ourselves to.

9 THE CHAIRMAN: Delegate Willoner.

10 DELEGATE WILLONER: In the original, my ori-
11 ginal proposal it was left out for that reason, but this is
12 a compromise worked out between Judge Child, Judge Hender-
13 son, Al Scanlan, Delegate Kiefer, myself, Delegate Mac-
14 donald; and that is the way it is. But it certainly
15 is the intent that the inherent right of the court to remove
16 a case where there is prejudice to the defendant or State
17 would not be involved here.

18 THE CHAIRMAN: Delegate Bamberger.

19 DELEGATE BAMBERGER: Mr. Chairman, may I ask if
20 any of the parties to the compromise have any objection
21 to removing that sentence?

1 THE CHAIRMAN: State the sentence so that there
2 will be no misunderstanding.

3 DELEGATE BAMBERGER: To remove the sentence which
4 begins, on line 12, "All other criminal," and remove lines
5 13, 14, and 15.

6 THE CHAIRMAN: Delegate Scanlan.

7 DELEGATE SCANLAN: Delegate Bamberger, you know
8 my feelings on this general subject. You can remove with
9 my hearty approval.

10 THE CHAIRMAN: Delegate Henderson?

11 DELEGATE HENDERSON: I am just a little doubtful
12 about removing it. It seems to me that having dealt
13 with the cases punishable by life imprisonment it was
14 quite appropriate to provide that these others be covered,
15 either by rule or by the General Assembly.

16 It is quite inconceivable to me that either the
17 law or the rule of the court could take away from any accused
18 the right to a fair trial, and therefore that those two would
19 have to be read together.

20 In other words, it certainly would be the limi-
21 tation, the minimum that the rules or the law could provide

1 would be not to avoid the element of due process.

2 THE CHAIRMAN: Delegate Macdonald.

3 DELEGATE MACDONALD: Mr. Chairman, fellow dele-
4 gates:

5 I do not share Delegate Bamberger's difficulty.
6 I think this completes the thought.

7 THE CHAIRMAN: Delegate Macdonald, Delegate
8 Bamberger is satisfied. He withdraws his concern and
9 comment.

10 Are you ready for the question?

11 The Clerk will ring the quorum bell.

12 The question arises on the adoption of Amend-
13 ment 19. A vote Aye is a vote in favor of the amendment.
14 A vote No is a vote against.

15 Cast your votes.

16 Has every delegate voted? Does any delegate de-
17 sire to change his vote?

18 The Clerk will record the vote.

19 There being 99 votes in the affirmative and 7
20 in the negative, the motion is carried. The amendment
21 is adopted.

1 The Chair understands there are no other amend-
2 ments to section 12. Does any delegate have any further
3 amendment?

4 (There was no response.)

5 THE CHAIRMAN: If not, we reach section 13.

6 Before doing that, the Chair has had handed to
7 it an amendment marked AQ, which is the amendment sub-
8 mitted by Delegate Henderson, although this one bears the
9 names Bothe and Willoner.

10 Would the pages please distribute Amendment AQ?
11 Please mark it 17.

12 I assume Delegates Bothe and Willoner join Judge
13 Henderson in sponsoring that amendment?

14 DELEGATE BOTHE: Mr. Chairman, this amendment
15 was made without knowledge that Judge Henderson was present-
16 ing precisely the same, and debate on the subject at this
17 point would obviously be in the nature of a reconsidera-
18 tion of the decision just made.

19 THE CHAIRMAN: I just want to use the amendment
20 to give it the number 17, the number we have already
21 debated, and I wanted to know whether to leave your name on

1 or off.

2 DELEGATE BOTHE: Leave it on.

3 THE CHAIRMAN: Delegate Willoner.

4 DELEGATE WILLONER: Leave it on.

5 THE CHAIRMAN: Mark it Amendment No. 17, by
6 Delegates Willoner, Bothe and Henderson.

7 There are no further amendments to section 12.

8 The next section is section 13.

9 Delegate Scanlan, do you desire to offer your
10 amendment?

11 DELEGATE SCANLAN: Yes, I do.

12 THE CHAIRMAN: The pages will please distribute
13 Amendment U.

14 This will be Amendment 20. The Clerk will read
15 the amendment.

16 MR. QUILLEN: Amendment No. 20 to Committee
17 Recommendation R&P-2, by Delegate Scanlan:

18 "On page 4, Section 13, Imprisonment for Debt,
19 strike out all of lines 10 through 19, inclusive.

20 THE CHAIRMAN: The amendment is submitted by
21 Delegate Scanlan. Is there a second?

1 Delegate Bennett. Second.

2 THE CHAIRMAN: The amendment is seconded by
3 Delegate Bennett.

4 The Chair recognizes Delegate Scanlan to speak
5 to the amendment.

6 DELEGATE SCANLAN: I would like to yield to the
7 chairman of the committee, who has a statement to make
8 with respect to the amendment.

9 THE CHAIRMAN: Delegate Kiefer.

10 DELEGATE KIEFER: Again, Mr. Chairman, in an
11 effort to speed up this matter -- I don't know that there
12 is strictly a conflict here, but there is a serious prob-
13 lem with respect to the technical language of this section.
14 It is taken verbatim from the present Constitution, and
15 there is some question as to what needs to be done to retain
16 the effects of it without cluttering up the Constitution.

17 I would just like to read very briefly from a
18 letter from John W. Ester, Professor of Law, University
19 of Maryland, who at our special request considered this.

20 He said: "Based on a long line of Maryland cases
21 with which I am sure you are familiar, the Court of Appeals

1 has taken the position that in the absence of legislation
2 so providing, a man cannot be imprisoned for failure to
3 comply with a court decree for alimony or child support.
4 Therefore, it is desirable to continue this method of en-
5 forcing such decrees; and most attorneys feel that it is
6 and would be necessary to have a statute or Constitutional
7 provision to that effect.

8 However, I see absolutely no reason for this
9 topic to be covered in the new Constitution if it can be
10 covered by legislation, thereby avoiding the unnecessary
11 cluttering of the Constitution.

12 I would suggest, sir, this could be handled
13 by transitory provisions and would adequately protect
14 the present situation; and that we hold anything on this
15 on the basis that it is properly and can be properly covered
16 in the transitory section.

17 THE CHAIRMAN: I am lost. Hold what?

18 DELEGATE KIEFER: This amendment -- or rather,
19 this section.

20 I think we would be willing to delete it if it
21 can be properly, if the protections afforded in it can

1 be adequately covered in a transitory provision.

2 THE CHAIRMAN: We can't conclude consideration
3 of R&P-2 by holding the amendment. Can't we
4 act on the amendment, and if it is deleted, you can still
5 take care of the situation in the transitional provision
6 schedule?

7 DELEGATE KIEFER: I think we can do that, if we
8 can be assured that we can cover it in the transitory pro-
9 visions, yes.

10 THE CHAIRMAN: I would assume if you run into a
11 situation where you feel you cannot, that your committee
12 could make a supplemental report of the new committee
13 recommendation; and I am sure the Convention would allow you
14 to file it, even though it is after Amendment 17.

15 DELEGATE KIEFER: On that basis, we will not ob-
16 ject to the amendment.

17 THE CHAIRMAN: Is it necessary to discuss the
18 amendment?

19 DELEGATE SCANLAN: I am happy to see the white
20 flag. I won't press the amendment.

21 THE CHAIRMAN: Delegate Macdonald.

1 DELEGATE MACDONALD: I would like to ask the
2 sponsor of the amendment a question.

3 THE CHAIRMAN: Delegate Scanlan, do you yield to
4 a question?

5 DELEGATE SCANLAN: I do.

6 THE CHAIRMAN: Delegate Macdonald.

7 DELEGATE MACDONALD: Delegate Scanlan, was
8 it true that it was necessary to amend the Constitution
9 recently to provide a provision for child support, which
10 is similar to the provision here in section 13?

11 THE CHAIRMAN: Delegate Scanlan.

12 DELEGATE SCANLAN: I believe that was done.

13 DELEGATE MACDONALD: If it was necessary to amend
14 the Constitution to allow a father to be imprisoned for non-
15 support of a child, why isn't it necessary now?

16 THE CHAIRMAN: Delegate Scanlan.

17 It seems to the Chair, Delegate Macdonald,
18 you are talking about the converse, if I followed your
19 question.

20 Delegate Scanlan, I didn't mean to interrupt.

21 DELEGATE SCANLAN: The Chair expressed my own

1 bewilderment, there. I thought he was going in circles,
2 too.

3 DELEGATE MACDONALD: My question is this:
4 If it was necessary to have the provision in the Constitu-
5 tion previously so that the father who failed to support
6 his children could be held in contempt of court, and in ef-
7 fect imprisoned for that particular debt, why isn't it
8 necessary today?

9 DELEGATE SCANLAN: If the Constitution has a
10 provision preventing imprisonment for debt, problems are
11 raised as to exactly what that means.

12 As I understand the majority's report, they con-
13 cede in their report that the General Assembly has absolute
14 power to prohibit this sort of thing; and that even if the
15 General Assembly took no action the common law would pre-
16 vail.

17 The cases of which you speak are traditional. It
18 is imprisonment for failure to obey a court order.
19 I see no reason for retaining this provision in the Constitu-
20 tion.

21 THE CHAIRMAN: Delegate Macdonald, I could give

1 you perhaps a more direct answer.

2 Section 38 of Article III of the present Constitu-
3 tion, in the first clause says: "No person shall be im-
4 prisoned for debt."

5 It was because of that provision that the
6 amendment of which you speak was necessary. If that had
7 not been in the Constitution the amendment would not have
8 been necessary. If this section 13 is omitted, this
9 Constitution will not have any similar provision that
10 a person shall not be imprisoned for debt.

11 Does that answer your inquiry, Delegate Mac-
12 donald?

13 DELEGATE MACDONALD: Not completely, Mr. Chair-
14 man.

15 I may be in error, but it has always been my
16 impression that the provision now in section 38, Article III
17 to which you have referred, namely, that no person shall be
18 imprisoned for debt, was simply declaratory of the common law,
19 and even if we didn't have that section in our Constitution
20 today, that prohibition would remain, and it was neces-
21 sary to include a provision in the Constitution to take

1 care of the child support provision. I could be in error.
2 That is my impression.

3 THE CHAIRMAN: I think you are. The amend-
4 ment was made to section 3.8 because of the first
5 clause, because of the way section 3.8 read before the
6 amendment.

7 In other words, the provision, the amendment as
8 to imprisonment for non-support of children, was an amend-
9 ment of section 3.8 of Article III.

10 DELEGATE MACDONALD: I understand that fully,
11 Mr. Chairman, but if we had no section 3.8 of
12 Article III of the Constitution today, and the article
13 was complet -- and the matter was completely
14 silent as far as the Constitution is concerned, I don't think
15 a man could be imprisoned in the State of Maryland for debt.

16 THE CHAIRMAN: Delegate James.

17 DELEGATE JAMES: Mr. Chairman, I think I know
18 the legislative history of why the General Assembly amended
19 the law by way of Constitutional amendment.

20 My recollection is that problems used to occur
21 where separation agreements under which husbands would

1 agree to support wives and children were embodied in
2 decrees.

3 The courts ruled that the court could not
4 enforce these decrees because this was a contract, even
5 though embodied in a decree; and therefore you were put-
6 ting a man in jail for failure to pay his debt. So that
7 in order to clarify the situation and make it
8 clear the obligation to support the wife and children
9 was not a debt within the concept of the constitutional
10 protection, this language was adopted to clarify that
11 point. I believe it was by amendment back in 1950.

12 THE CHAIRMAN: Delegate Willoner.

13 DELEGATE WILLONER: Mr. Chairman, as one member
14 of the committee -- and I remember committee discussions
15 on this -- I don't like taking something out if we don't
16 know exactly what we are doing. I don't want to be
17 imprisoned for debt in this State, and I would object
18 to the committee agreeing this be removed.

19 It seems to me that that was the problem we had
20 when we discussed it in the committee. As far as we are
21 concerned, the legislature could imprison for debt --

1 at least that is the way it was in the committee -- unless
2 it was left in there.

3 We did something earlier today when we took out
4 a right. Now I am finding out we may have permitted
5 the judges direct verdicts of guilty. I don't know if that
6 is true or not. Surely if we take this out we don't know
7 what we are doing.

8 THE CHAIRMAN: Delegate M. Smith.

9 DELEGATE M. SMITH: Is it in order to speak
10 against the amendment, Mr. Chairman?

11 THE CHAIRMAN: Yes.

12 DELEGATE M. SMITH: I certainly oppose this
13 amendment. Now, we felt it necessary here to state
14 that no bill of attainder or ex post facto law shall be en-
15 acted. We felt it necessary there to say that there shall
16 be no conviction of crime that shall work corruption of
17 blood or harm to the State.

18 I for one am not going to take away the prohibi-
19 tion against imprisonment for debt.

20 Now, I think I am correct in saying that there is
21 at least one of the States at the present time, New

1 Hampshire -- at least it was in the news -- some 20 or 25
2 years ago -- to act on this subject of imprisonment for
3 debt. I take cognizance of the fact that there are people
4 right today who would be very happy to put bills through
5 the General Assembly providing for imprisonment for debt;
6 and I think that this is a matter that should remain in our
7 Bill of Rights.

8 THE CHAIRMAN: Any further discussion?

9 Delegate Lloyd Taylor.

10 DELEGATE L. TAYLOR: I have a point of inquiry,
11 Mr. Chairman. I would like to address this either
12 to the Chair or to Mr. Scanlan.

13 In Baltimore City when some fellows are brought
14 into court and ordered to pay on a non-support order to
15 their children and wife, many times some of these men are
16 unemployed and therefore cannot comply with the
17 court order, and in lieu of this the Department of Public
18 Welfare pays the amount of money to the family of the
19 man who has been brought into court.

20 I am trying to find out, would this change
21 the interpretation that Delegate Scanlan made concerning this

1 particular section 13? Would this be considered a debt, say,
2 if the man who was brought into court was willing to pay the
3 Welfare Department back?

4 In other words, when the man returns to work, the
5 probation department orders the particular person to
6 pay the Welfare Department back; and also to continue sup-
7 port payments.

8 THE CHAIRMAN: Do you understand the question,
9 Delegate Scanlan?

10 DELEGATE SCANLAN: I think I do.

11 I don't think the deletion of the provision
12 would in any way change the conditional right or prerogative
13 to imprison fathers who don't support their children pur-
14 suant to court order.

15 In other words, you are talking about contempt
16 of court, which is permissible under the present Constitu-
17 tion and would remain permissible even if the prohibi-
18 tion against imprisonment for debt is removed.

19 THE CHAIRMAN: Delegate Taylor.

20 DELEGATE L. TAYLOR: Many fathers are unemployed.
21 They do not have money to pay the court order, so in lieu

1 of that, the Welfare Department makes the payments, and
2 then this is considered against their particular amount of
3 money they owe to their familiy, and they have to pay the
4 Welfare Department back.

5 THE CHAIRMAN: Delegate Scanlan.

6 DELEGATE SCANLAN: Their obligation to the Welfare
7 Department is a debt for which they couldn't be imprisoned
8 now, and certainly regarded as highly unlikely that the
9 General Assembly would ever pass legislation which would
10 imprison a man for failure to pay back to the Welfare Depart-
11 ment what he owes it.

12 THE CHAIRMAN: Delegate Storm.

13 DELEGATE STORM: Mr. Chairman, I would certainly
14 hate to see the Constitutional protection against imprison-
15 ment for debt removed.

16 There are many many practitioners who love to
17 see debtors put in jail, and many debtors think
18 they are going to jail if they don't pay. The legislature
19 would be under terrific pressure to enact a bill allowing
20 imprisonment for debt. I think that we should not allow
21 such a Constitutional prohibition to be removed when we have

1 had it. It has been healthy. It has been good.

2 I just hate to see us shorten this Constitution down in an
3 important part like this when we have provided all kinds
4 of little details of how the General Assembly shall be run
5 and how the Courts shall be operated. This is just going
6 too far.

7 THE CHAIRMAN: Any further discussion?

8 Delegate Willoner.

9 Is Delegate Willoner in the room?

10 You asked a question before. I don't know that
11 this would be an answer, but you might consider whether
12 or not the existence of the 13th amendment to the Constitu-
13 tion of the United States would remove your concern as
14 to imprisonment for debt.

15 Is there any further discussion?

16 DELEGATE WILLONER: Isn't that the Schafley Arti-
17 cle?

18 THE CHAIRMAN: It is indeed, but it goes much fur-
19 ther than that.

20 DELEGATE WILLONER: Has it been held?

21 My only question was, and the question I had

1 in committee, was simply if we eliminate this provision,
2 can the legislature imprison for debt?

3 The answer was, as I recollect, and as Mrs. Bothe
4 recollects, that it could.

5 Now, if it has been held otherwise, I am glad to
6 go along with Mr. Scanlan.

7 THE CHAIRMAN: I don't want to make an off-the-
8 cuff comment on that. I would seriously doubt that the 13th
9 amendment -- I would suggest to you that the 13th amendment
10 would probably prevent the legislature from providing for
11 imprisonment for debt. It certainly would be involuntary
12 servitude for other than conviction of crime.

13 Delegate Kosakowski.

14 DELEGATE KOSAKOWSKI: Mr. Chairman, I rise in
15 opposition to Delegate Scanlan's amendment. I believe this
16 section is too important, and I believe if the lawyers
17 can't agree in here and there is any doubt, let's not
18 eliminate this section. I believe it is just as important
19 to leave it in rather than to create any doubts in the mind
20 of anyone if a person can be imprisoned for debt.

1 I would urge this assembly to support the
2 majority committee recommendation.

3 THE CHAIRMAN: Any further discussion?

4 Delegate James, did you want the floor?

5 DELEGATE JAMES: I just wanted to say that I
6 don't feel like testing to see whether the 13th amendment
7 of the Federal Constitution will keep me from being incar-
8 cerated for debt in the event I became unfortunate in later
9 life.

10 THE CHAIRMAN: Delegate Taylor.

11 DELEGATE L. TAYLOR: Mr. Chairman, I just
12 want to make this point: There are many men who are ordered
13 to pay a court order, and becuae of their particular
14 education and training cannot obtain employment, and
15 many times they may have the skills, but cannot obtain
16 employment. So many times they areordered to pay the court
17 order and can't find the means to pay the court order.
18 And of course, many men have been imprisoned because they
19 have fallen behind on the court order. Now this, of
20 course, is a circumstance beyond our control, and of course
21 they are imprisoned because of a social handicap, and I feel

1 therefore, that we should keep this in the Constitution.

2 THE CHAIRMAN: Any further discussion?

3 Delegate Sherbow.

4 DELEGATE SHERBOW: My only suggestion is that no
5 matter how this goes, the language in the report on page 6
6 which says, "If this prohibition were removed
7 from the present Constitution, the General Assembly would
8 have the power to prevent imprisonment for debt and could
9 also provide exceptions as it so desired."

10 I end that quote, although there are a few lines
11 more.

12 The Chairman's reference to the 13th amendment
13 led me to say I most earnestly hope that by the time we get
14 through we have in this as part of our deliberation a real
15 memorandum of what the law will be, depending on what we
16 do. I would hate to see it in this State.

17 THE CHAIRMAN: Are you ready for the question?

18 The question rises on the adoption of Amendment
19 20.

20 The Clerk will ring the quorum bell.

21 The question arises on the adoption of Amendment

1 20. A vote Aye is a vote in favor of the amendment. A vote
2 No is a vote against.

3 Cast your votes.

4 Has every delegate voted? Does any delegate
5 desire to change his vote?

6 The Clerk will record the vote.

7 There being 17 votes in the affirmative and 88
8 in the negative, the motion is lost. The amendment is
9 rejected.

10 Delegate Gallagher, do you desire to offer your
11 amendment AB?

12 DELEGATE GALLAGHER: Mr. Chairman, I do -- and
13 I will be very brief about it.

14 THE CHAIRMAN: Very well.

15 The pages will distribute Amendment AB. This will
16 be Amendment 21.

17 Delegate Gallagher, while the amendment is being
18 read, would you consider whether in line 9 the word "and"
19 ought to be "or"?

20 The Clerk will read the amendment.

21 MR. QUILLEN: Amendment No. 21 to Committee

1 Recommendation No. R&P-2, by Delegate Gallagher:

2 On page 4 following line 19 of Section 13,
3 Imprisonment for Debt, add the following new Section:

4 "Section 14. Legislative and Executive Investi-
5 gations:

6 "No person's right to fair and just treatment in
7 the course of legislative and executive investigations shall
8 be infringed."

9 THE CHAIRMAN: The amendment has been proposed
10 by Delegate Gallagher.

11 Is there a second?

12 (Whereupon, the amendment was seconded.)

13 THE CHAIRMAN: The amendment having been seconded,
14 the Chair recognizes Delegate Gallagher.

15 DELEGATE GALLAGHER: Mr. Chairman, ladies and
16 gentlemen:

17 First I would agree that the word "and" on line
18 9 ought to read "or", so it would be "legislative or execu-
19 tive", and I request permission of the Committee of the
20 Whole to make that amendment.

21 THE CHAIRMAN: The amendment is modified to

1 change the word "and" to "or" in line 9, there being no
2 objection.

3 Delegate Gallagher.

4 DELEGATE GALLAGHER: Mr. Chairman, ladies and
5 gentlemen of the Committee:

6 This particular amendment is offered -- and it
7 is word for word from a section that was contained in the
8 report of the Constitutional Convention Commission.

9 It was omitted from the legislative committee's
10 report because it applied to another branch of the govern-
11 ment as well, that is to say, to the executive branch.

12 An examination of the law would indicate that even
13 though our Constitution and the Federal Constitution would
14 guarantee due process to witnesses appearing before legis-
15 lative bodies and their committees, and executive agen-
16 cies as well, that nevertheless the scope of due process
17 would not extend to a genuine fair treatment of these
18 witnesses. And as you will see from the memorandum
19 which is submitted and marked AB, in a leading case, Hannah
20 v. Marr, decided by the Supreme Court in 1960, it was
21 specifically held that the requirements of due process
were satisfied even when subpoenaed witnesses were not given

1 an opportunity to know who complained against them, what
2 the nature of the complaint was, when they had no opportunity
3 afforded for confrontation and cross examination of the
4 complaining witnesses.

5 It would seem to me that one thing that we
6 want to prohibit is the inclination of legislative bodies
7 to go on fishing expeditions. It would seem to me
8 that in granting the powers to committees to subpoena witnesses
9 that we would want to guarantee that a legislative
10 committee would not want to hold someone up to scorn and
11 to have them punished simply because what they believed was
12 out of step with what was popular.

13 Consequently, I believe it incumbent upon this
14 Convention to see to it that we have a Constitutional
15 provision which requires fair and just treatment. How
16 this will be implemented, of course, will fall into the
17 hands of the General Assembly itself, or to the executive
18 bodies of the State, but it seems to me that we do not go
19 far enough when we simply provide for due process. We must
20 take the further step and guarantee that witnesses who are
21 subpoenaed against their will on many occasions will not be

1 the objects of ill treatment.

2 Consequently, I would urge the adoption of
3 this amendment.

4 THE CHAIRMAN: Delegate Kiefer -- for what
5 purpose does Delegate Case rise?

6 DELEGATE CASE: Mr. Chairman, I would like to
7 ask the sponsor of this amendment two questions, if I may.

8 THE CHAIRMAN: Delegate Gallagher, do you yield
9 to a question?

10 DELEGATE GALLAGHER: I do.

11 THE CHAIRMAN: Delegate Case.

12 DELEGATE CASE: Delegate Gallagher, does the word
13 "person," in line 8, also include "corporations"?

14 THE CHAIRMAN: Delegate Gallagher.

15 DELEGATE GALLAGHER: Well, to the extent that a
16 corporation is subpoenaed, I would say that the person who
17 represents it is entitled to this treatment. I think
18 under the interpretation of the law that a corporation is
19 generally considered to be a person in any event.

20 THE CHAIRMAN: Delegate Case.

21 DELEGATE CASE: Does the word "legislative" in

1 line 9 include investigations made by legislative agencies,
2 like the State Insurance Department or the Public Service
3 Commission?

4 THE CHAIRMAN: Delegate Case, the Chair is
5 puzzled. You regard the State Insurance Department as a
6 legislative agency rather than a department of the execu-
7 tive branch?

8 Delegate Case.

9 DELEGATE CASE: The Circuit Court of Baltimore
10 has so held.

11 THE CHAIRMAN: Very well.

12 DELEGATE CASE: Of course, the Public Service
13 Commission, acting in its investigatory powers, is exer-
14 cising legislative power.

15 THE CHAIRMAN: Delegate Gallagher.

16 DELEGATE GALLAGHER: To the extent that any of
17 these agencies would be found to be legislative agencies, I
18 would certainly agree.

19 THE CHAIRMAN: Delegate Case.

20 (There was no response.)

21 THE CHAIRMAN: Delegate Kiefer.

1 DELEGATE KIEFER: Mr. Chairman, first let me be
2 sure that everyone understands that none of the recommenda-
3 tions contained in Personal Rights Recommendation No. 2
4 are to be considered part of section 1, which is the Bill of
5 Rights as such. They are part of general provisions, or
6 wherever else they might properly fit.

7 I have no personal objection to this. I frankly
8 don't know what "fair and just treatment" means. I would
9 be shocked to believe that the policy of this State or
10 any of its legislative or executive investigative bodies
11 would be other than fair and just, but if, as Delegate Galla-
12 gher says, this was language that was in the draft, it is
13 perfectly all right.

14 I don't want to be unhelpful. I am perfectly
15 willing to be helpful, and if this is desirable, I have
16 no objection as such. It seems a little silly to me,
17 though.

18 THE CHAIRMAN: Any further discussion?

19 Delegate Boileau.

20 DELEGATE BOILEAU: Mr. Chairman, may I direct
21 a question to Delegate Gallagher?

1 THE CHAIRMAN: Delegate Gallagher, will you
2 yield to a question?

3 DELEGATE GALLAGHER: In my present obliterated
4 state I yield to a question, yes.

5 THE CHAIRMAN: Delegate Boileau.

6 DELEGATE BOILEAU: Do the words "legislative or
7 executive" also mean, would they refer to local government
8 units?

9 THE CHAIRMAN: Delegate Gallagher.

10 DELEGATE GALLAGHER: They could be so interpreted,
11 but it is my intention, and I believe it was the intention
12 of the Commission, to have them refer to the State legis-
13 lative body and its committees, that is to say, the
14 General Assembly, and the committees created pursuant there-
15 to, and executive means the State executive.

16 THE CHAIRMAN: Delegate Boileau, any further
17 questions?

18 DELEGATE BOILEAU: I just have one question, because
19 it seems to be all-encompassing as it is written now, and
20 I would suggest if that is the import or desire of the maker
21 of this motion, that it be changed; that is, the word "State"

1 somehow be interjected.

2 THE CHAIRMAN: Delegate Gallagher.

3 DELEGATE GALLAGHER: Mr. Chairman, I believe
4 that --

5 THE CHAIRMAN: May I make an observation?

6 DELEGATE GALLAGHER: Yes.

7 THE CHAIRMAN: I do not believe that the
8 Commission was intending to limit it to State agencies, but
9 rather intending to embrace all governmental agencies
10 within the term "legislative or executive," if that has any
11 bearing on the matter.

12 DELEGATE GALLAGHER: That being the case, sir, I
13 will say this:

14 The language is subject to the interpretation
15 that it does not apply exclusively to the State agencies.
16 Since I am adopting the language in order to carry out the
17 full intent of the Commission, and because I believe it is
18 necessary, I would amend my answer to say, therefore, that
19 it is my intention that it applies to all legislative and
20 executive investigations.

21 THE CHAIRMAN: Any further questions of the

1 sponsor?

2 Any further discussion?

3 Are you ready for the question?

4 The Clerk will ring the quorum bell.

5 The question arises on the adoption of Amendment
6 21. A vote Aye is a vote in favor of the amendment; a vote
7 No, a vote against.

8 Cast your votes.

9 Has every delegate voted? Does any delegate
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 92 votes in the affirmative and 12
13 in the negative, the motion is carried. The amendment is
14 adopted.

15 The pages have distributed to you the amendment
16 marked AR. That is Amendment 18, on which you have already
17 acted. Amendment 18 is AR. Please note the modification
18 that was made by striking out the words "capital or other
19 infamous crime", in line 7, and inserting the word "felony".

20 There are two other amendments to this article.
21 Both will require, I am afraid, considerable debate.

1 One is the amendment proposed originally as Minority Report
2 R&P-1C by Delegate Willoner and others. The other is an
3 amendment proposed by Delegate Morgan and others which will
4 add another section.

5 There are also two other amendments dealing with
6 sections passed over.

7 The Chair feels that the hour is too late to go
8 further without recess for dinner. It is imperative that
9 the committees mentioned earlier be able to meet this evening.
10 The plan, therefore, will be, notwithstanding our failure to
11 complete R&P-2, to adjourn now until tomorrow.

12 I think you can count safely on the fact that
13 there will not be a session tomorrow night, nor on Saturday,
14 because this time is needed by the two committees. Whether
15 we will have to return on Monday or on Tuesday depends on
16 the progress made tomorrow.

17 The Chair recognizes Delegate Powers.

18 DELEGATE POWERS: Mr. Chairman, I move
19 the Committee of the Whole rise and report
20 that it has not yet concluded its consideration of Committee
21 Recommendation R&P-2.

1 THE CHAIRMAN: Is there a second?

2 (Whereupon, the motion was seconded.)

3 THE CHAIRMAN: All in favor, signify by saying Aye;
4 opposed, No.

5 The Ayes have it. It is so ordered.

6 (Whereupon, at 7:00 p.m. the Committee of the
7 Whole rose, and the Convention reconvened.)

8 (The mace was replaced by the Sergeant at Arms.)

9 THE PRESIDENT: The Convention will please
10 come to order.

11 On behalf of the Committee of the Whole the
12 Chair reports that the Committee has had under considera-
13 tion Committee Recommendation R&P-2, that it still has it
14 under consideration, and desires leave to sit again.

15 For what purpose does Delegate Kathleen Robie
16 rise?

17 DELEGATE K. ROBIE: A point of personal privilege.

18 THE CHAIRMAN: State the privilege.

19 DELEGATE K. ROBIE: Mr. Chairman and ladies and
20 gentlemen, I would like you to join with me in welcoming Mr.
21 Jack Lancaster, the First Vice President of the Maryland

1 Congress of Parents and Teachers, who came to watch our
2 deliberations this evening. Will you join with me in
3 welcoming him? (Applause.)

4 THE PRESIDENT: Any announcements by Committee
5 chairmen?

6 Delegate Penniman.

7 DELEGATE PENNIMAN: The Committee on Style will
8 meet this evening at 8:30.

9 I would also like to announce the selection of
10 Delegate Scanlan as an honorary member of our committee.

11 THE PRESIDENT: Any further announcements by
12 Committee chairmen?

13 The Chair would like to announce that all Commit-
14 tee chairmen, other than Chairman Penniman, will meet in Room
15 137, the Court of Appeals building, at 8:30 this evening.

16 Are there any further announcements by other
17 delegates?

18 If not, the Chair recognizes Delegate Powers.

19 I am sorry. Delegate Dulany.

20 DELEGATE DULANY: The meeting of the Committee
21 on Public Information scheduled for immediately after the

1 recess has been cancelled. We will meet tomorrow promptly
2 after the luncheon recess.

3 THE PRESIDENT: All delegates not present at roll
4 call may indicate their presence now on supplemental roll
5 call.

6 The Clerk will record the supplemental roll call.

7 Delegate Barrick, the Clerk will note your
8 presence on the roll call manually.

9 Delegate Powers.

10 DELEGATE POWERS: Mr. Chairman, I move we adjourn
11 until 10 o'clock tomorrow morning.

12 THE PRESIDENT: All in favor, signify by saying
13 Aye; contrary, No.

14 The Ayes have it. It is so ordered.

15 (Whereupon, at 7:03 p.m., the Convention
16 adjourned, to reconvene at 10:00 a.m. of the following day.)

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